IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TEXARKANA DIVISION

THE STATE OF TEXAS, Plaintiff	)	
VS.	)	CIVIL ACTION NO. 5-96CV91
THE AMERICAN TOBACCO COMPANY, ET AL	)	

ORAL DEPOSITION
OF
PATRICIA A. STOUT

VOLUME II

(ACCOMPANIES VIDEOTAPE)

AUGUST 22, 1997

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VS.	)	CIVIL ACTION NO. 5-96CV91
THE AMERICAN TOBACCO COMPANY; R.J. REYNOLDS TOBACCO COMPANY; BROWN & WILLIAMSON TOBACCO CORPORATION; B.A.T. INDUSTRIES, P.L.C.; PHILIP MORRIS, INC.; LIGGETT GROUP, INC.; LORILLARD TOBACCO COMPANY, INC.; UNITED STATES TOBACCO COMPANY; HILL & KNOWLTON, INC.; THE COUNCIL FOR TOBACCO RESEARCH-USA, INC. (Successor to Tobacco Institute Research Committee); AND THE TOBACCO INSTITUTE, INC., Defendants	)	

* *

ORAL DEPOSITION OF PATRICIA A. STOUT, VOLUME II

* *

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ANSWERS AND DEPOSITION OF PATRICIA A. STOUT, VOLUME II, a witness called by the DEFENDANT PHILIP MORRIS, taken before SALLY KING, Certified Court Reporter for the State of Texas, on AUGUST 22, 1997, beginning at 9:01 a.m. and ending at 12:03 p.m., at the offices of the Attorney General of the State of Texas, 300 West 15th Street, Austin, Texas 78701, pursuant to the Federal Rules of Civil Procedure.

APPEARANCES

For the Plaintiff:
TEXAS TOBACCO LITIGATION ASSOCIATION
By: Mr. Hugh E. McNeely
2901 Turtle Creek Drive, Suite 201
Bank One Building
Port Arthur, Texas 77642
(409) 727-0800

For the Defendant Philip Morris:
JOHNSON & TYLER
By: Ms. Julia J. Tyler
2127 R Street NW
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(202) 667-6602

For the Defendant Lorillard Tobacco Company, Inc.:
SHOOK, HARDY & BACON, L.L.P.
By: Mr. John C. Monica, Jr.
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Also present:
Mr. Brent Kirby, videographer
LEGAL MEDIA (512) 708-1001

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(Deposition Exhibit No. 6
(marked for identification.
THE VIDEOGRAPHER: The time is 9:01 a.m.

PATRICIA A. STOUT, VOLUME II

was called as a witness and, having been previously duly sworn, testified as follows:

EXAMINATION

BY MS. STOUT:

Q. Good morning, Professor Stout. Again, I'm Julia Tyler with Johnson & Tyler in Washington, D.C., and I represent Philip Morris in this matter. We are continuing your deposition in the Texas attorney general litigation after counsel for the state halted the deposition yesterday after six hours of deposition time. 09:01

I understand that you were available for three hours this morning, and I appreciate your making yourself available at this time. I will do my best to complete your deposition this morning. However, we have a lot of ground to cover. Under the order, I'm allowed to depose you for 12 hours of deposition time, and unfortunately, I am 09:01

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pessimistic that I will finish today. I believe we will be reconvening on another date which is mutually convenient for all of us, but again, I appreciate your making yourself available this morning. 09:01

Professor Stout, after we broke yesterday, did you and counsel for the state have a conversation? 09:02

A. A conversation? 09:02

Q. Did you meet with counsel for the state, Hugh McNeely and/or Ed Hohn? 09:02

A. Just as we briefly walked over to the hotel, and then we did meet at the hotel and have a -- I had some water. 09:02

Q. And about how long did you meet with them? 09:02

A. Well, Ed left immediately for the airport because we had concluded the day's events, and Hugh McNeely and I were probably together 30 minutes or so. 09:02

Q. And what did you and Hugh McNeely discuss? 09:02

A. His wife coming into town and matters that weren't associated with the case anyway. 09:02

Q. Did you discuss this case at all? 09:02

A. Not that I recall. 09:02

Q. It was last night, but you don't recall 09:02

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having discussed this case at all? 09:02
A. Right. 09:02
Q. Did you meet with Hugh McNeely this morning? 09:02
A. I did. 09:02
Q. For about how long? 09:02
A. Probably about 30 or -- 30, 45 minutes. 09:02
Q. Did you discuss this case at that time? 09:02
A. We discussed -- we did discuss the case to some degree. 09:02
Q. Did you discuss this deposition? 09:02
A. We discussed relative to the documents that you had spoken about yesterday, and so I had brought the documents in. 09:02
Q. And what did you -- what did you discuss? 09:02
A. Well, I had just given him the documents so that he could see what I had brought in, so... 09:02
Q. Did he give you any sort of instructions or suggestions regarding your testimony today? 09:02
A. Not really, no. 09:02
Q. When we broke yesterday, Professor Stout, we were discussing the documents that you received from plaintiff's counsel, and I believe you mentioned that you had received from Texas Tobacco Litigation one chapter of 09:02

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a dissertation which regarded public relations. Regarding that dissertation, was that chapter specifically about tobacco? 09:0

A. It -- it does discuss tobacco advertising and public relations, yes. 09:0

Q. Are specific companies mentioned? 09:0

A. As I recall, they are. 09:0

Q. And you received this dissertation -- this chapter of this dissertation two weeks ago? 09:0

A. This arrived sometime earlier than two weeks ago. 09:0

Q. From Texas Tobacco Litigation? 09:0

A. Yes. 09:0

MS. TYLER: I'll state for the record we do not have a copy of a dissertation regarding tobacco and public relations. 09:0

Q. Professor Stout, you also mentioned that you obtained a couple hundred advertisements from Doctor Pollay. 09:0

A. Those were sent by Texas Tobacco Litigation. 09:0

Q. Precisely. And when did you obtain those? 09:0

A. Those were over the course of the summer sometime. 09:0

Q. Did you receive them all at once, or did you 09:0

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receive them in bits and pieces? 09:05
A. I believe those were in bits and pieces. 09:05
Q. When did you first start to receive those tobacco advertisements? 09:05
A. Sometime this summer, probably sometime after June. 09:05
Q. You also mentioned that you received four inches of internal tobacco industry documents from Texas Tobacco Litigation; is that correct? 09:05
A. That's correct. 09:05
Q. And from what you could recall of those industry documents, you received surveys which discussed individual brand selections and individual choices among brands, and the companies that you could recall that commissioned those surveys were Philip Morris and you thought one Canadian company. Is that your recollection? 09:05
A. Right. I believe for the surveys there may be there are some materials from R.J. Reynolds in that group of materials as well. There may be a survey that's sponsored by R.J. Reynolds too. I can't recall right now. 09:06
Q. And you mentioned that you believe you 09:06

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received two or three surveys. 09:06
A. Right. I think there were two or three. 09:06
Q. Professor Stout, how many surveys do you think Philip Morris conducts or has conducted on its behalf every year? 09:06
A. I have no idea how many they conduct each year. 09:06
Q. Do you think it's more than two or three? 09:06
A. It would depend, I imagine, on what the area was. So -- 09:06
Q. Well, you said that these surveys concerned individual brand selections and choices among brands. Do you think that Philip Morris conducts several surveys every year on those issues? 09:06
A. I really have no idea how many surveys they would do each year. 09:06
Q. Do you think that you received all of the surveys that Philip Morris and RJR have conducted regarding individual brand selections and choices among brands that have been conducted or conducted on their behalf over the last 20 years? 09:06
A. I really don't know because I don't know how many they've done. 09:07

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Q. So you don't know if the group that you have obtained, the group that was sent you, is a complete set?
A. That's correct.
Q. Do you think it's complete?
A. I don't know. I don't know how many they might -- they might conduct annually or over the past 20 years.
Q. Did you ask if that was a complete set?
A. Ask Philip Morris?
Q. Did you ask plaintiff's counsel if that was a complete set?
A. I didn't -- I didn't ask them that, no.
Q. Did you ask plaintiff's counsel if there were additional surveys?
A. I did not request those.
Q. Did you ask if there were additional surveys?
A. I did not, no.
Q. And you did not request additional documents?
A. Additional documents or additional surveys or --
Q. Let's stick to surveys for the moment. You did not request additional surveys?
A. From?
Q. Plaintiff's counsel.

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A. No, I did not. 09:07
Q. Did you obtain surveys from anywhere else? 09:08
A. I have seen some other documents that -- I'm not certain if they're surveys, but I may have from other sources, yes. 09:08
Q. What will your testimony be at trial with respect to those surveys, Professor Stout? 09:08
A. Well, those are part of the documents that I have reviewed that I will be basing my opinions on, so it will depend on -- they are part of the materials that I have looked at, in addition to everything else that's been deposited. 09:08
Q. What opinions do you base on those surveys? 09:08
A. Well, they give insight into research that's been done on individuals relative to smoking and behavior and purchases. 09:09
Q. Purchases among brands? 09:09
A. There is -- there is -- the surveys do look at -- or testing to look at brands, among other things, yes. 09:09
Q. What other things? 09:09
A. Well, they are very long documents, so I can't really comment on every single thing that's in them. 09:09

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Q. You also mentioned that you received research reports from plaintiff's counsel. What companies, if any, generated those research reports? 09:09

A. The research companies? 09:09

Q. The research reports that you received. 09:09

A. Of which tobacco company? 09:09

Q. Correct. 09:09

A. I have materials from Philip Morris and RJR, and I would have to look through to specifically delineate. 09:10

Q. Can you describe these research reports? 09:10

A. Well, there are -- they discuss issues relative to branding and brand development, targeting users of the product, among other things. 09:10

Q. What other things? 09:10

A. Well, some of the materials are quite lengthy, so I -- 09:10

Q. As you sit here today, that's all you can recall? 09:10

A. Yes, that's all I can recall. 09:10

Q. How often do you think Philip Morris, for example, generates research reports in a year? 09:10

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A. I have no idea. 09:1
Q. How many research reports did you receive? 09:1
A. I would say a couple. 09:1
Q. Two or three? 09:1
A. I would think. It kind of depends on how you define a research report. I mean, it's real clear that the surveys are surveys, based on the way the data are presented, but a research report could be defined more broadly, I think. 09:1
Q. Well, using the broadest definition that you can think of, how many research reports do you think you've received? 09:1
A. There may be as many as a half dozen in the materials that we're discussing right now. 09:1
Q. So you think you may have received six research reports from plaintiff's counsel? 09:1
A. That's correct. 09:1
Q. And you have no idea how often Philip Morris or RJR generates research reports in any given calendar year? 09:1
A. No, I have no idea. 09:1
Q. Did you ask if there were other research reports in plaintiff's counsel's possession? 09:1
A. I did not inquire, no. 09:1

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Q. Did you ever ask for additional research reports? 09:11
A. From? 09:11
Q. Plaintiff's counsel. 09:11
A. No, I did not. 09:11
Q. Why not? 09:11
A. It -- I was looking at evidence. I've been trying to collect evidence. We -- I'm assuming, as I say, we have a number, as you've seen on the deposition, a number of documents and information that have been requested from the defendants, and I'm assuming that those are sent to me as they come in from the defendants. 09:12
Q. Do you have any idea of how many documents the defendants have produced to plaintiff's counsel in this case, Professor Stout? 09:12
A. Well, I know yesterday's discussion, the number of 360 boxes, at least, that haven't been looked at yet, so I'm assuming there's more than 360 boxes, assuming that some have already been opened and looked at. 09:12
Q. Would it surprise you to know that the defendants have produced literally millions of pages of documents to plaintiff's counsel 09:12

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in this case? 09:12
A. Like I say, I wouldn't know. 09:12
Q. And so you have seen four inches of internal company documents sent to you from plaintiff's counsel; is that correct? 09:12
A. I believe that's correct, yes. 09:12
Q. Did you assume that those four inches of internal company documents were all the internal company documents that defendants have produced to plaintiff's counsel at this point in time in this litigation? 09:13
A. I probably would not have assumed that. I would assume there would be documents on a number of different issues regarding the case. 09:13
Q. I'll repeat my question. Why didn't you ask plaintiff's counsel for additional research reports? 09:13
A. I didn't inquire because I assumed that they would be sent to me when they were available. I have no idea how many research reports either of these companies produces each year, so for all I know, this may be all that they've done. 09:13
Q. Is it your assumption as you sit here today 09:13

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that you have received all of the research reports that the defendants in this litigation have produced to plaintiff's counsel? 09:1

A. I have no way of knowing that. 09:1

Q. Would you hope that you had received all of those research reports? 09:1

A. Well, research reports that were relevant to the area that I'm commenting on as an expert witness. As I said, a research report can be broadly defined, and there may be research reports that are on epidemiological issues or things that are outside of the purview of my expertise. 09:1

Q. Well, I appreciate your clarifying, and I am confining my comments to the areas of advertising, marketing and consumer behavior. 09:1

Would you hope that you had received and would you expect that you had received from plaintiff's counsel all research reports pertaining to the defendant's advertising, marketing and consumer behavior activities that were produced to plaintiff's counsel in this case? 09:1

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A. I would assume that plaintiff's counsel had sent me what they had available that was relevant to my area of expertise.

Q. Would it surprise you to know that they have not sent you everything that is available that is relevant to your area of expertise?

A. I have no idea what particular things they have in their possession relative to what I have received, so...

Q. If you found that that was the case, would that make you question your opinions, the fact that you have not received fully complete information from plaintiff's counsel?

A. If there are other documents that I would review, I assume, based on just the -- relative to my deposition, that there are documents that are -- have been requested, that if they have been received, they have not been -- they are not at a point where they can made available yet. But I would -- if there are other documents I should review, certainly, I would review those and look at those, and if they have an impact on my opinion, then, obviously, I would take that

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into account.
Q. Well, you obviously can't take into account in your opinion documents that you have never seen because plaintiff's counsel has never provided them to you; is that correct?
A. If I have not seen all documents that exist, then obviously I'm basing my opinion on the realm of those documents.
Q. On the realm of documents that were selected by plaintiff's counsel; is that correct?
A. Well, in addition to other evidence that I have also looked at or documents that I have reviewed. So things have been collected through various sources.
Q. Did you obtain internal company documents from anywhere other than the plaintiff's counsel?
A. I believe I have some what might be considered internal company documents that have been received from elsewhere, yes.
Q. Where did you receive those internal company documents?
A. My thought is that those probably were obtained in Houston from DOC.
Q. Do you believe that you saw all of the

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internal company documents that DOC has in its files? 09:16
A. Well, as I said yesterday, I'm not quite sure all of the things that DOC has in its files and the purview of the nature of their collections, and so I can't really speak to whether I have seen every internal document they have in their file, period, or relative to my expertise as well. 09:16 09:16 09:16 09:17 09:17 09:17
Q. Do you have any idea how DOC went about gathering the internal company documents that it obtained? 09:17 09:17 09:17
A. I do not, no. 09:17
Q. Do you know if plaintiff's counsel has produced a list of internal company documents that you obtained from DOC to me? 09:17 09:17 09:17
A. They would be -- well, I believe that the materials that I have obtained from DOC were in the lists that I had prepared, so -- 09:17 09:17 09:17
Q. Did you prepare lists for plaintiff's counsel? 09:17 09:17
A. I prepared indices of the materials that I had relied on and reviewed for my -- for my deposition statement. 09:17 09:17 09:17
MS. TYLER: I request for the 09:17

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record, given the confusion in this case regarding documents produced to the defense, that that list created by Professor Stout be produced to defense counsel as soon as practical.

Q. How many internal company documents did you obtain from DOC's files?

A. It's hard to recall. They are -- relative to all of the materials that were collected from that source, it was not a large proportion, so there may be a couple, three, four more documents.

Q. And what was the nature of those documents?

A. They again had to do with marketing and -- marketing of cigarettes.

Q. Do you intend to base your opinions on those marketing documents that you obtained from DOC?

A. Certainly they are part of the documents that I will be reviewing and have reviewed for my opinions.

Q. Are there specific opinions that you can think of as you sit here today that you intend to offer at trial that will be based on those documents?

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A. They contribute to the opinions that I have formed, yes. 09:19
Q. Getting back to surveys, you mentioned that you did not request from plaintiff's counsel additional surveys. Why did you not request from plaintiff's counsel additional surveys? 09:19
A. I believe we talked about that already. 09:19
Q. I don't recall asking you why you didn't ask plaintiff's counsel for additional surveys. 09:19
A. Well, I thought I had answered that. I'm sorry. 09:19
Q. I think we were talking about research reports. 09:19
A. Oh, okay. Well, it would be the same answer then, I mean, relative to knowing what the universe of documents was and whether or not those were available yet so that they would be available to me. 09:19
Q. Are you assuming again that you have obtained all of the surveys that defense counsel has produced to plaintiff's counsel in this litigation that are relevant to the issues of advertising, marketing and consumer behavior? 09:20
A. I have no idea what has -- of all the materials that have been made available. 09:20

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Q. Would you hope that all of the surveys relevant to your areas of expertise, advertising, marketing and consumer behavior had been provided to you by plaintiff's counsel? 09:20 09:20 09:20 09:20 09:20

A. Ideally, if there were documents available, I would like to see those documents if they are available and in a position, meaning that they've been logged in or whatever is done with documents when they arrive in boxes so that they can, in fact, be disseminated. I would assume there are -- well, that's what I would -- that's what I would expect. 09:20 09:20 09:20 09:20 09:20 09:20 09:20

Q. I can represent to you that prior to today, defense counsel and defendants have produced literally millions of pages of documents to plaintiff's counsel. 09:20 09:20 09:20 09:20

A. Uh-huh. 09:20

Q. And I want to find out whether or not it would impact your opinions in any way to know that you have not, in fact, received copies of all of the surveys that defense counsel to date have provided to plaintiff's counsel in this litigation. 09:20 09:20 09:21 09:21 09:21

A. Well, as I said, if there are additional 09:21

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documents that I should review, then I would hope that I would have access to those documents to review them as I would prepare for trial, certainly, if I don't -- if I have not seen the universe of documents at this point in time.

Q. Do you consider seeing the universe of documents important to the credibility of the opinion that you will provide at trial in this case?

A. Well, the more information a person can possibly get about any issue obviously helps them. The more input you have, the more you have to base an opinion on. So as I said, given what would be available, obviously we don't always have complete information when we form our opinions, and so I would like to have access to as much information as possible.

Q. And you can't base your opinions or qualify your opinions based on documents that you have never seen; is that correct?

A. Well, if documents exist that people have not seen or if there's information that people don't have access to, then it's hard to use

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that as part of their decision-making process. 09:21

Q. Do you plan to request from plaintiff's counsel additional surveys that pertain to your areas of expertise to assist you in forming opinions in this case? 09:21

A. I'm not familiar with the procedure enough to know whether or not I can do that at this point in time, if I can make requests after deposition or... 09:21

Q. So at this point, you do not plan to ask plaintiff's counsel for additional documents? 09:22

A. As I said, I don't know what the procedure is, whether or not it's appropriate for me to do that, given that we're at deposition. 09:22

Q. Do you hope that the procedure will permit you to see additional documents? 09:22

A. Well, I would hope so. The deposition statement lists a number of different things that my opinion is to be based on, given the fact that we would -- I would have access to that information. So I'm assuming I haven't seen everything because there's a list on the deposition statement of additional documents that have been requested. 09:23

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Q. Do you think that you have seen everything relevant to your opinions in the areas of advertising, marketing and consumer behavior that have been produced to plaintiff's counsel to date? 09:23

A. I have no idea. 09:23

Q. Would you hope that you had received all of those documents? 09:23

A. Given that I would assume that there is some clerical time involved as well, once boxes of paper come in, I would hope that I would get them in a timely manner, yes. 09:23

Q. Well, I'm talking about documents that have been produced up to this date or perhaps up to two weeks ago. Would you hope that you had received all of the documents from -- all the internal company documents relevant to your areas of expertise from plaintiff's counsel? 09:23

A. If within -- if, in fact, there were -- or hypothetically. If hypothetically there were 360 boxes, if those could be catalogued and whatever clerical work needed to be done before those could be disseminated to individuals then, I would hope within the 09:24

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realm of, as I say, reality of seeing what, in fact, were in boxes, going through boxes of materials and seeing which things were relevant that they should be sent to certain individuals, but I would hope that I would have access.

Q. Do you trust plaintiff's counsel to send you what's relevant -- what they think is relevant to your opinions in this case?

A. Plaintiff's counsel obviously has access to information that I, as an individual citizen, don't have access to, and so I certainly take the information that I am provided by plaintiff's counsel and I utilize that as part of opinions that I form. So -- but it is part of materials that I have reviewed, also taking into account my education, my expertise, my knowledge about the area. So it is one part of the material that I use for forming my opinion, excuse me, but it's only one part.

Q. You understand that plaintiff's counsel has a vested interest in this case, do you not?

A. Yes. I would assume that both parties have a vested interest, the people producing the

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documents and the people disseminating the documents, yes.

Q. And do you have -- strike that.

If I represent to you that you have not received all of the surveys and research reports generated by the tobacco companies and produced to plaintiff's counsel by defendants in this case, my question is, do you have any idea how plaintiff's counsel selected the documents that they chose to show to you?

A. No, I do not.

Q. Do you care?

A. I would like to see as many documents as I could, obviously, so that I would have more information upon which to base my opinion, that they may have been the ones that were in the first boxes that were catalogued in. I have no idea of how they made the decision.

Q. Would you consider that appropriate research methodology to provide you with documents from the first box that they logged in?

A. If they were relevant to my area of expertise and why I was giving an opinion in this case, rather than they should log in all 360 boxes

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and then decide what to send me. That might explain why I don't have more. I don't know what method is used to do this. It's outside of my area, really. 09:26

Q. Would you feel comfortable writing a dissertation based on relevant documents contained in the first box of documents that you received and not look at all the other boxes that you received? 09:26

A. Well, if I were writing a dissertation, it would be a different matter, but... 09:26

Q. Do you consider the opinions that you are going to provide the jury in this case different from your dissertation? 09:27

A. It is different to the degree. Yes, it is different to some degree. 09:27

Q. How is it different, Professor Stout? 09:27

A. Well, the dissertation is a piece of written work that's done to get an academic degree. And certainly, if you want to talk about research methodology, or not even research methodology but doing research in general, it's similar in that, as we discussed yesterday, one forms a question, gathers information, does research, writes it up. 09:27

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I don't assume I'll be writing up anything in this case. From my -- at least from my personal opinions, I don't assume I'll be doing any kind of statistical analyses of any data in that sense. I haven't been asked to do any surveys of individuals, for example. So -- so one likes to base one's decision on as much information as one has available at the time. 09:27

Q. Do you think you have the best available information available at the time? 09:28

A. Well, it's hard for me to say, given that I am of the understanding now that not only are there 360 boxes, but there are a million pages of paper. I do not know what is on those and how much of that is relevant to the area of expertise that I'm here to speak on. 09:28

Q. So you don't know if you have obtained all of the relevant information that you need to give an accurate and thorough opinion in this case; is that correct? 09:28

A. Well, that would be correct, although I know I haven't received things that are on the deposition statement of things that have been requested from the defendants, so -- 09:28

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Q. You also mentioned internal company memoranda. Can you tell me what companies produced those internal company memoranda? 09:28
A. As I recall -- I can't recall all, but I do know that there are -- probably the memoranda are more from R.J. Reynolds. I can't name all of the -- 09:28
Q. Do you recall how many internal company memoranda you received? 09:29
A. Not off the top of my head, no. 09:29
Q. What, if anything, do you know about the people in the -- at RJR who authored these internal company memoranda? 09:29
A. What do I know about them? 09:29
Q. Do you know -- do you know them personally? 09:29
A. I don't believe I know them personally, no. 09:29
Q. Do you know their positions within the company? 09:29
A. On the memoranda, oftentimes it lists who the person is and what their position is. 09:29
Q. And you understand at this point I'm a little handicapped because I don't have those internal company documents with me. I do have a Bates stamp list, but that does not provide that kind of specific information. 09:29

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Do all of the memoranda provide the position of the author and the recipient? 09:2
A. What do you mean by position? 09:2
Q. Position within the company. 09:2
A. Oh, their -- what their -- I can't recall that. I'm not sure that they all do. I'm not sure that they all do, but I can't -- I can't recall. Many of them do. 09:3
Q. Do you intend to rely on those internal memoranda for your opinions that you will render in this case? 09:3
A. Well, those are materials that I am and have looked over in forming my opinions, yes. So it is part of the materials that I have reviewed. 09:3
Q. And what opinions do you intend to base on those internal company documents? 09:3
A. Opinions that I have listed in the deposition statement. 09:3
Q. With respect to these memos, Professor Stout, do you have any information which establishes that any of the opinions or strategies mentioned therein were effectuated by the companies? 09:3
A. I'm sorry. What do you mean by that? That 09:3

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they implemented them or -- 09:3
Q. Correct. 09:3
A. I really can't say because I -- relative to 09:3
the -- I can't recall the nature of all of 09:3
the material in the memoranda, and I don't 09:3
know -- like I say, I can't really comment on 09:3
whether or not information that was presented 09:3
in the memoranda, then, would have actually 09:3
been implemented by the company. So I'm 09:3
unable to answer that question, if that's the 09:3
question. 09:3
Q. Do you recall an internal company -- 09:3
reviewing an internal company memoranda which 09:3
discussed strategy relative to marketing and 09:3
advertising? 09:3
A. I believe that some of the memoranda do 09:3
discuss that, yes. 09:3
Q. Can you give me an example? 09:3
A. Well, an example may be relative to strategy 09:3
with demographic changes in the population 09:3
across time, as certain age groups grow or 09:3
shrink across time and what kind of impact 09:32
that will have on marketing to individuals 09:32
relative to their total number in the 09:32
population. It's either going to shrink or 09:32

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grow across time.

Q. Was that a general theory regarding demographics, or was there a plan of action proposed in this memorandum?

A. I think I have seen more towards the specific rather than to the very general. Clearly, their demographic trends tend to be general kinds of pieces of information, because you are predicting in 1990 what the population is going to be like in the year 2000, but I think I have reviewed both.

Q. So you recall seeing specific plans of action in these internal company memorandum?

A. There have been some recommendations for plans of action, yes.

Q. And with respect to these recommendations for plans of action, what information do you have which establishes that any of these recommendations for plans of action were effectuated by the companies?

A. I don't -- in the documents that I have at this point in time, I don't know that there is information in there that indicates that, in fact, the companies had undertaken some kind of an action as a result of the

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memorandum.
Q. So in fact, you don't know whether any of these recommended plans of action were ever implemented by the companies; is that correct?
A. I would say that I would not be sure that I -- I couldn't say no or yes that I know that none had been, but -- because I don't have every page of every piece of information memorized, so I think there are indicators that would suggest that some of them might have been implemented.
Q. As you sit here today, can you point me to any information which establishes for you that the recommendations of action you have just mentioned were implemented by the defendants?
A. Well, I don't think I've -- of the information that I have reviewed, I cannot say with confirmation that I have materials that indicate that they have been recommended -- or implemented, rather. Like I say, there are a number of documents or number of pieces of information that have been requested from the defense that I have

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not yet been able to review, though. 09:34
Q. So, Professor Stout, you are planning to look at additional internal company documents to find out whether or not these recommended courses of action were actually implemented by the companies? 09:34
A. Well, as I say, certainly I can base an opinion on the information that I have now. There are additional documents that have been requested and information that's been requested. If I am able to see those materials that have been requested, then those would obviously have some impact on my opinion, I would assume. 09:35
Q. But do you think that those documents will be relevant to whether or not these proposals for plans of action were ever implemented? 09:35
A. It's hard for me to say at this point in time. 09:35
Q. So you don't know? 09:35
A. I wouldn't know at this point in time, no. 09:35
Q. You also mentioned that of the internal company documents you received, you received copies of talks that had been given. Can you be more specific? 09:35

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A. Yes. Included in these documents are the scripts for speeches that had been given by individuals. 09:35

Q. Was one of the documents you received a presentation for Immish Maxwell? 09:35

A. I can't recall specifically if I have that document or not. 09:35

Q. How many of these speeches did you receive? 09:36

A. I would guesstimate that there may be a half dozen or -- a half dozen to a dozen in the documents that I received. 09:36

Q. From what companies? 09:36

A. I can't say for sure. With some certainty, R.J. Reynolds, but I'm not sure that I don't have some others as well. 09:36

Q. Do you intend to base the opinions that you will give in this case on those talks? 09:36

A. Well, they are part of the materials that I have reviewed to form my opinions, yes. 09:36

Q. How do they contribute to the basis of your opinions? 09:36

A. They provide information about what individuals who worked for tobacco companies were presenting at the time. 09:37

Q. Do you know -- this was not a videotape; is 09:37

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that correct?
A. No. These are transcripts like what you would read if you were giving a speech. It seems like that to me. 09:37
Q. It seems like that to you, but you don't know? 09:37
A. Well, one of them, I would say it looks like it's a marked copy, like it was edited by the speaker, actually. So I would assume it was a copy of something someone used to -- 09:37
Q. Now, when I --
A. Their reading copy.
Q. I'm sorry. I didn't mean to interrupt you. 09:37
A. That's fine. 09:37
Q. When I mark on a copy of a -- was this a typewritten document? 09:37
A. It was, yes. 09:37
Q. Now, when I mark on a typewritten document, those are usually drafts. Do you know if these documents that you reviewed were drafts or final executions of a speech that might have been given? 09:37
A. I can't say for sure at this time. 09:38
Q. Does it matter to you? 09:38
A. It would -- well, clearly, they -- I would 09:38

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look at -- they would be two different documents if one was a draft and one was the final presentation. So... 09:3

Q. So, in fact, the presentation that was ultimately given by any of these tobacco companies to whomever that audience was may not have been precisely similar to what you saw or really anything like what you saw; isn't that correct? 09:3

A. There is the possibility that it may have been altered, but there is -- there are drafts, so unless one isn't working at all from their draft, then, or from the typewritten copy. 09:3

Q. And when you saw drafts of these documents, did you request the final copy from plaintiff's counsel? 09:3

A. Well, I don't know for a fact that these are drafts, and I have not based on, as we've discussed about earlier, documents that I have in my possession, I have not requested additional copies. 09:3

Q. And, in fact, you don't know whether these documents were drafts or not? 09:3

A. I'm trying to recall relative to if "draft" 09:3

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is typed at the top, for example, and/or the nature of what is -- if they appear to be available for release because there's adequate identification on there so that you'd know that it was intended for release rather than just a working copy that the speaker might have been carrying around in their pocket, for example. 09:39

Q. And there's certainly other indicia of documents that are in draft, apart from someone writing "draft" on the top of the document; isn't that correct? 09:39

A. It's possible, yes. 09:39

Q. Does it impact your opinion in any way to know that you obtained drafts of documents from the defendants? 09:39

A. Does it impact my opinion in any way to know that I obtained drafts of documents from the defendants? 09:40

Q. And did not obtain final copies of those documents. 09:40

A. I don't know for a fact that these are all drafts, and you're meaning that these are documents that were released by the defendants to the plaintiffs so that they 09:40

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could be sent to me? 09:40
Q. I will not represent to you that the defendants produced those documents to plaintiffs so that they could be sent to you. 09:40
A. Okay. Well, you just said the documents then were released by the defendants, so -- 09:40
Q. I'm trying to find out if it would impact your opinion in any way if you were to find out that you had received drafts of documents from plaintiff's counsel and had not received final copies of those documents. 09:40
A. Well, if I were able to ascertain that I, in fact, had drafts or final documents. 09:40
Q. Did you ever ask plaintiff's counsel if you had drafts? 09:40
A. I haven't. As I've said earlier today, I have not requested additional materials from plaintiff's counsel that were in this package of documents that were sent, for the reasons that I had mentioned earlier this morning. 09:41
Q. My question was: Did you ask plaintiff's counsel if you had received drafts? 09:41
A. I did not ask them that, no. 09:41
Q. Were there any other types of internal 09:41

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company documents that you received from plaintiff's counsel to rely on in this case?

A. I can't recall relative to categories of information, but there are other -- there are other materials, I believe, in the packet of documents, but --

Q. Can you categorize those remaining documents in any way?

A. That's what I'm trying to do, and I really -- I don't think I can.

Q. Can you describe them in any way?

A. There may be other categories of information besides those that I have mentioned to you, but I can't recall at this point in time what they are.

Q. Did you receive -- strike that.

What was your instruction with respect to the internal company documents you received from plaintiff's counsel?

A. They were simply sent to me with instructions to review, so usually it was a one-sentence cover letter, these are documents for your review.

Q. Was there anything said about why you were receiving these documents and not others?

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A. Not in any cover letter that I got, no.
Q. Is this four inches of documents that you have described the only internal company documents you have received in this case?
A. Well, as I mentioned earlier, there were some that have been what I would assume are internal company documents that I obtained from DOC.
Q. So plaintiff's counsel and DOC are the only two sources of internal company documents you have reviewed in this case?
A. I believe that's true.
Q. Why don't we mark for the record Stout Deposition Exhibit Number 6. I'll represent to you, Professor Stout--

MR. McNEELY: 7.

Q. I apologize. Stout Exhibit 7, which is a list of Bates numbers which were provided to us yesterday by plaintiff's counsel, Ed Hohn. And I would like to state for the record that I have contacted Arnold & Porter in Denver regarding whether or not this list was previously provided to defense counsel, and I have been informed that it was not.

I'm going to show you that list of

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Bates numbers and ask you if you have any idea whether or not those Bates numbers represent the internal company documents that you have reviewed in this case.

(Deposition Exhibit No. 7 (marked for identification

A. Well, the documents that I have in my possession do have numbers of this sort on them, so they are -- but I cannot confirm that everyone on this list would match every document that I have. But I do see strings of numbers or symbols here that I have seen on the documents that I have, yes.

Q. Professor Stout, at a break, would you be willing to allow plaintiff's counsel to copy the internal company documents that you have brought with you today?

A. I am not familiar with what the procedure is for that.

Q. Would you be willing to have them do it?

A. I'm not familiar with what the procedure is for doing that.

Q. If there's a procedure that will allow them to copy those documents for us so that we can get a look at some of the internal company

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documents you have reviewed in that case, would you be willing to permit them to do that? 09:4

MR. McNEELY: Well, I can tell you that we'll be happy to do that. If those have not been received by you, we'll be happy to do that. 09:4

Q. Would you be willing to turn those over? 09:4

A. If it's within the appropriate procedure, yes, I would be. 09:4

Q. Thank you. 09:4

Professor Stout, what special expertise do you have in interpreting internal company documents? 09:4

A. What do you mean by interpreting? 09:4

Q. Well, you have reviewed internal documents produced by the defendants to plaintiff's counsel in this case. Plaintiff's counsel has produced selected documents to you. And I assume that you have reviewed those documents. Have you engaged in some level of interpretation of those documents in order to rely on those documents to form your opinions in this case? 09:4

A. Yes, I have. 09:4

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Q. What special expertise do you have in interpreting internal tobacco industry documents? 09:4

A. My education, my background, my research. The -- they pertain to marketing and advertising, particularly advertising-related issues, and obviously, they, I believe, are within the realm of my expertise. 09:4

Q. You mentioned yesterday that you are not an expert in organizational communication; is that correct? 09:4

A. That's true. 09:4

MR. McNEELY: Excuse me. Can we go off the record for just one second? 09:4

MS. TYLER: Can we -- all right. Let's go off the record. 09:4

THE VIDEOGRAPHER: 9:46. 09:4

(OFF THE RECORD) 09:4

THE VIDEOGRAPHER: Back on at 9:52 a.m. 09:5

Q. Professor Stout, we're back on the record after a short break. Are you ready to proceed? 09:5

A. I am. 09:5

Q. The question I believe that was pending 09:5

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before we broke was what special expertise you have in interpreting internal company documents. Can you answer that question now?

A. The -- my expertise in advertising, my education, my -- other documents I have reviewed, and these are part and parcel of what I use then when I would interpret the documents.

Q. Have you had occasion to review confidential internal company documents for other industries in the course of your work?

A. I believe that I have probably seen some in the course of my entire career, yes.

Q. In what capacity did you review those documents?

A. Well, those would have been things that I would have seen relative to -- well, I'm sure I have because I have seen advertising agency work that's been done across -- across my career, so...

Q. So because you have seen advertising agency work across your career, that gives you special expertise that makes you qualified to interpret internal company documents relative to advertising?

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A. I can read documents of a broad nature and be able to make interpretations from those, yes, including internal company documents. 09:5
Q. Did you review internal company documents of a broad nature? 09:5
A. I believe I have, yes, if you look at -- I'm not quite sure what you are referring to, if it's just memorandum or if it's surveys or if it's marketing plans. Certainly, if those are all internal company documents, then I do have expertise in interpreting those types of things. 09:5
Q. And the basis of that expertise in interpreting documents, in your opinion, is the fact that you reviewed advertising documents when you worked in an advertising agency? 09:54
A. That's one part, but as I mentioned earlier, then my education, my background. 09:54
Q. In your education, Professor Stout, have you had occasion to review internal confidential company documents? 09:54
A. I -- as I said, I have seen things that have been produced by advertising agencies. Certainly, in my teaching, I teach students 09:55

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to write marketing plans, so I should be able to interpret a marketing plan or a memo or an executive summary or something of that sort then that discusses those kinds of issues that are relevant to marketing and advertising. 09:55

Q. Do you teach your student how to interpret internal company documents? 09:55

A. I teach my students how to write documents that would eventually be internal company documents, yes. 09:55

Q. You mentioned -- we were going through the documents that you obtained from plaintiff's counsel, and we were up to internal company documents, which we've discussed at some length. What other types of documents did you obtain from plaintiff's counsel? 09:55

A. I believe yesterday we discussed ads that I had obtained. 09:55

Q. Advertisements, and these were collected by Professor Pollay? 09:56

A. That's correct. 09:56

Q. Anything else? 09:56

A. I believe that's it. 09:56

Q. What other sources of documents are there? 09:56

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A. What other sources of documents? 09:5
Q. What other sources did you obtain documents relevant to your opinions in this case from? 09:5
A. Multiple sources. I received -- obviously -- I believe we went over this yesterday. I have materials in my own files. I collected materials that were in students' files relative to work in the area. I have got materials that were collected from DOC. Obviously I have materials that were provided for me by counsel. 09:5
Q. Have we discussed all of the documents that were provided to you by counsel in this case thus far? 09:5
A. And by those, you mean -- 09:5
Q. The chapter of the dissertation, the advertisements prepared by Doctor Pollay, and the four inches of internal company documents. 09:5
A. I believe we have, yes. 09:5
Q. With respect to the materials from your own files, can you describe those? 09:5
A. Many of those are research that's been published in academic journals or maybe in the popular press. 09:5

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Q. Do you have a clipping file regarding tobacco advertising? 09:57
A. I do, yes. 09:57
Q. How long have you been maintaining a clipping file regarding tobacco advertising? 09:57
A. It would be hard to say. Off and on, probably for several years. 09:57
Q. How long have you been interested in the area of tobacco advertising? 09:57
A. I have -- it's always been a key area of advertising relative to advertising that's done. So clearly, as I said yesterday, it's discussed in courses that I teach. It's oftentimes used as a case example in many textbooks. 09:58
Q. And yet, in all the work that's reflected on your CV, you have never specifically studied tobacco advertising? 09:58
A. I have not done primary research or published in that area, no. 09:58
Q. Can you quantify -- you mentioned academic journals. You have a clipping file. What other materials did you obtain from your own files? 09:58
A. Well, I have numerous -- like I say, based on 09:58

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my knowledge and the like of books that I have in my possession and --

Q. What books are you referring to?

A. Well, any textbooks that I might have in my possession, books that have been published that are on advertising and marketing, consumer behavior.

Q. Are there any textbooks that you can think of that you specifically reviewed in connection with your testimony in this case?

A. I have -- in connection with my testimony for this case, I have looked through books that I have in my possession to see how they -- the information that's provided in them relative to advertising and tobacco.

Q. Do any of those books come to mind?

A. There are dozens of them.

Q. What other materials did you obtain from your own files?

A. I -- some advertising examples that I have been collecting over the years.

Q. Can you describe the ads that you have been collecting over the years?

A. Well, I collect -- I collect a lot of ads, and many of those are for cigarettes or

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tobacco-related products. 09:5
Q. Can you tell me how many tobacco ads you have collected over the years? 09:5
A. I really don't know an exact number. 10:0
Q. Professor Stout, I am showing you a collection of advertisements which were produced by plaintiff's counsel as advertisements that you have reviewed and rely on to support your opinion. Can you briefly look through that pile and tell me whether or not those are advertisements that came from your own files or whether you obtained them from someplace else? 10:0
A. Most of these materials look like they have been obtained from DOC. 10:0
Q. So it's your recollection that these advertisements were obtained from the files of DOC when you traveled to Houston; is that correct? 10:0
A. That would be my recollection, yes. 10:0
Q. Is there any -- are there any other materials that you can think of that you have obtained from your own files that you intend to rely on to support your opinions in this case? 10:0
A. Not offhand. 10:0

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Q. Can you quantify the materials that you have obtained from your own files? 10:01
A. As compared to -- 10:01
Q. In terms of inches. I guess in this case we should start using feet, but let's use inches for the moment. 10:01
A. Use inches for now. I would say -- I would say probably -- well, it's hard to say. Like I say, some of it's from my files and some of it I have had collected -- 10:01
Q. I'm just talking about your files for the moment. 10:02
A. For my personal files? Probably -- it's hard to say. Probably less than a foot. 10:02
Q. Let me clarify or let me ask another question. With respect to academic journal articles, how many academic journal articles did you have in your own files? 10:02
A. That -- 10:02
Q. Relative to tobacco advertising. 10:02
A. I would say I had many. 10:02
Q. How many? 10:02
A. It would be hard to say how many. 10:02
Q. More than five? 10:02
A. Definitely more than five. 10:02

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Q. More than 10? 10:0
A. Definitely more than 10. 10:0
Q. More than 20? 10:0
A. I would say definitely more than 20, yes. 10:0
Q. More than 25? 10:0
A. It's hard to say. I realize that some things I have in my files have been duplicated by materials that I have collected from other sources, so I have ended up with duplications, sometimes two or three, because if they're seminal pieces or very popular pieces, then they would be in multiple sources that I have collected from. 10:0
Q. Less than 50? 10:0
A. Probably less than 50 from my personal files, yes. 10:0
Q. What materials did you ask your students to obtain? 10:0
A. I had students who are doing research on tobacco and tobacco advertising, and so in courses that I have taught, they have been working on projects in those courses. And so I had queried that they would allow me to borrow their materials and to copy their materials for my own files. 10:0

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Q. Did you discuss with these students the fact that you had been retained as an expert on behalf of the State of Texas in the Texas attorney general litigation? 10:01

A. No, I had not. 10:01

Q. You also mentioned that you traveled to DOC in Houston, I believe you said more than once? 10:01

A. Yes. 10:04

Q. On how many occasions? 10:04

A. I believe it was twice. 10:04

Q. And you obtained the ads that you have in front of you from DOC during that research trip, I believe you mentioned you -- MGT of America was also in attendance on this trip to DOC? 10:04

A. Right. There was a member from that firm, yes. 10:04

Q. Did you also obtain DOC newsletters while you were at DOC? 10:04

A. I am not aware of personally obtaining DOC newsletters. 10:04

Q. Would it surprise you to know that plaintiff's counsel has produced to me DOC newsletters? Do you have any idea where they 10:04

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would have obtained those, if you don't recall seeing them? 10:0
A. Do you have the documents so that I might look at them? 10:0
Q. I will get them at the break so that you can take a look at those. 10:0
What other types of documents did you obtain from DOC? 10:0
A. There are clippings. Obviously, there's advertising here. There are clippings from newspapers and other lay press, as well as I believe there were also some academic articles. Also, there were videotapes that I had reviewed, and then there is -- I believe there's some photos as well. 10:0
Q. Do you have copies of the photos and videotapes that you reviewed at DOC? 10:0
A. I have -- I do not have copies with me, no. 10:0
Q. Do you have copies somewhere else? 10:0
A. There are the copies that were reviewed at DOC. 10:0
Q. Do you intend to rely on those photos and videotape to support the testimony you will provide to the jury in this trial? 10:0
A. It would be -- it would be something that I 10:0

http://legacy.library.ucsf.edu/tid/ws07a00/pdf
Support provided by the Industry Documents Library: http://www.industrydocuments.ucsf.edu/docs/kpjl0001

would take into account in forming my opinion, yes. 10:0

MS. TYLER: I'll make a request on the record that we try to get -- that plaintiff's counsel get copies of those as well. We have not obtained any photographs or any videotapes that she reviewed while at DOC. 10:0

Q. Anything else, any other category of documents that you obtained while you were at DOC? 10:0

A. Not that I can recall. 10:0

Q. Looking back again at the stack of advertisements that you have in front of you, Doctor Stout, do you recognize any of those advertisements as advertisements from your own files? 10:0

A. I don't believe that those were probably submitted. Those are things that, as I say, that I have, and maybe they should have been submitted as well, nor did I xerox out the pertinent pages of every book that I've looked through. 10:0

Q. Do you plan to rely on the tobacco advertisements that you have in your own 10:0

http://legacy.library.ucsf.edu/tid/ws07a00/pdf
Source: http://www.industrydocuments.ucsf.edu/docs/kpjl0001

files to support the opinions you will render in this case? 10:07
A. Well, everything -- as I said, everything that I have looked at over the years, as well as certainly specifically for this case, will have some basis in forming my opinion. 10:07
Q. But it's my understanding that you have a specific personal collection of tobacco advertising in your office, and I'm asking, do you intend to rely on those advertisements to support your opinions in this case? 10:07
A. I may. 10:07
MS. TYLER: I can see that Mr. McNeely is already writing. I request that the plaintiffs please produce the tobacco advertisements that Professor Stout has in her files. 10:07
Q. Professor Stout, I'm showing you a collection of U.S. Journals of Drug and Alcohol Dependence, which were produced to defense counsel by plaintiff's counsel. Do you recognize those as documents you reviewed when you were at DOC? 10:08
A. I do. 10:08
Q. Do you recognize those as DOC newsletters? 10:08

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A. I wouldn't have identified this as a newsletter for DOC, no, but I do recognize them as having been in the collection, so they're -- 10:08

Q. Do you plan to rely on those documents to support the opinions you will render in this case? 10:08

A. These are materials that I have looked at that will go into rendering my opinions, yes. 10:08

Q. Of the documents that were produced to me in connection with this deposition, Professor Stout, I counted 41 articles from Tobacco Control. Where did you obtain articles from Tobacco Control? 10:09

A. I believe most of those were obtained from DOC. I believe that's where the subscription is. 10:09

Q. Have you ever read the mission statement of Tobacco Control? 10:09

A. I don't recall that I have. 10:09

Q. Do you think that it would be -- do you think that Tobacco Control's mission statement would be relevant to you if you were to copy 41 articles from that magazine? 10:09

A. I'm not quite sure what you mean. 10:09

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Q. Well, I will represent to you that plaintiff's counsel produced as many or more articles from Tobacco Control than were produced from any other journal of all the documents produced to me thus far. And my question to you is, considering how many articles you obtained from Tobacco Control, do you think it would be relevant to your consideration of those documents what tobacco control's mission statement is? 10:09 10:09 10:10 10:10 10:10 10:10 10:10 10:10

A. Well, I believe -- I have not read what their mission statement is. 10:10 10:10

Q. Do you consider Tobacco Control to be an unbiased source of information? 10:10 10:10

A. It is one source of information, like the other sources that I have. I haven't read the mission statement recently for the Journal of Consumer Research or JAMA or other publications either. 10:10 10:10 10:10 10:10 10:10

Q. My question to you, Professor Stout, is do you consider Tobacco Control to be an unbiased source of information? 10:10 10:10 10:10

A. I would say Tobacco Control has a perspective that they take with the information that they publish. 10:10 10:10 10:10

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Q. And what perspective is that? 10:11
A. They are in support of health-related issues relative to tobacco and tobacco use. 10:11
Q. Do you think they are supportive of the U.S. tobacco companies? 10:11
A. I wouldn't know what they support. 10:11
Q. If you had to put them down on one side or the other, pro-tobacco or anti-tobacco, what would you presume that they are, considering that the journal is entitled Tobacco Control? 10:11
A. Well, I'm not sure I can comment on that. I'm not sure unless in their mission statement they say that they are pro-tobacco or anti-tobacco that I could make that judgment. 10:11
Q. Do you care what their position is? 10:11
A. I would look at the position to the best of my knowledge of what it was when I reviewed any of the materials that I had. 10:11
Q. And you would consider that mission relevant to the credibility of the sources that you are reviewing; isn't that correct? 10:12
A. I would take that into account when I reviewed all of the materials, what the source of the -- where the source of the 10:12

http://legacy.library.ucsf.edu/tid/ws07a00/pdf
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information came from.

Q. But you didn't review the mission statement of Tobacco Control?

A. I did not review the mission statement of Tobacco Control or any of the other resources that I used as part of this.

Q. I'd like you to take a look at the ad which is on the top of the pile of advertisements you have in front of you. We can mark this Stout Exhibit Number 8. And that is an advertisement for Dakota Cigarettes, Professor Stout. Have you ever seen this advertisement before?

(Deposition Exhibit No. 8
(marked for identification.

A. I have, yes.

Q. Do you intend to rely on this advertisement to offer -- to support any of the opinions you will offer in this case?

A. This would be one of the pieces of information that I would use in forming my opinion, yes.

Q. Do you intend to testify regarding that advertisement?

A. This specific advertisement?

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Q. Or anything about it. 10:1
A. I imagine that issues related to this advertisement would be part of my -- certainly I have opinion, yes. 10:1
Q. What will your opinion be relevant to this advertisement? 10:1
A. On what in particular? 10:1
Q. They are your opinions, so you tell me. 10:1
A. Well, I believe that this ad shows -- is an example of targeting, for example. 10:1
Q. Targeting who? 10:1
A. Targeting who the brand is being sold to. 10:1
Q. And who -- who is that? 10:1
A. That would be women. 10:1
Q. What from this ad indicates to you that this cigarette is targeted at women? 10:1
A. I make that -- make that statement based on more information that I have than just looking at this ad. 10:1
Q. You have other information in your possession that Dakota Cigarettes were somehow targeted to women? 10:1
A. I have reviewed documents that lead me to that conclusion, yes. 10:1
Q. Can you identify those documents for me? 10:1

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A. They are documents that have been released. They are on my -- for deposit -- deposited.
Q. Are they internal company documents?
A. I believe one of those documents is.
Q. Do you know who sells Dakota Cigarettes, Professor Stout?
A. I don't believe it's sold any more, is it?
Q. That's correct. As a matter of fact, it's not sold any more. Do you know when it was -- do you know if it was ever sold nationally?
A. I can't recall whether it was just in test market or if it was -- well, if it was in test market, it would have been sold.
Q. Do you know where it was test marketed?
A. I don't right offhand, no.
Q. Do you know if it was test marketed in Massachusetts?
A. I don't right offhand, no.
Q. Do you know if it was test marketed in Arizona?
A. I don't right offhand.
Q. But those cigarettes are not sold today?
A. To my knowledge, they are not sold, no.
Q. Are you aware that Dakota was never

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nationally marketed?
A. I realize from looking at this ad that this ad was placed in the Houston press, so I assume they were marketed in Texas.
Q. My question was, are you aware that they were never nationally marketed?
A. I am -- I'm not sure whether they were or not.
Q. Do you know whether or not the Dakota brand of cigarettes failed in its test marketing?
A. Well, I would assume that if it was pulled -- well, I don't know that. I don't know whether it failed.
Q. Would that be relevant to your opinions?
A. It would be one piece of information I would take into account in doing my opinions, coming up with my opinions, yes.
Q. Looking again at that Dakota ad, can you tell me what about the ad tells you that that brand of cigarettes is marketed or targeted, as you say, to women?
A. Well, the -- do you want me to analyze the ad per se?
Q. Please.
A. The woman is smoking a cigarette. She has a

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cigarette in her hand.
Q. There's also a man in that.
A. Right. And I can't see the cigarette in his hand at this point in time.
Q. But there is both a male and a female in the ad; is that correct?
A. There is both a male and a female in the ad, correct.
Q. So looking at that ad, the fact that a woman has a cigarette in her hand tells you that that ad was targeted at women?
A. Well, certainly I would assume women were in the target market if the woman is smoking a cigarette.
Q. Is there anything else in that ad that tells you that Dakota was somehow targeted at women?
A. I can't say, not from this particular ad.
Q. I'm showing you another document, which we will mark as Stout Exhibit 9, which is an advertisement for a performance of the Alvin Ailey Dance Theater. Can you tell me what your testimony with regard to that advertisement will be?

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(Deposition Exhibit No. 9 (marked for identification

A. I believe my testimony -- and I'm not sure of the procedure what that means relative to the procedure different from the deposition, but clearly the -- this is a -- pages for a promotion or for an Alvin Ailey dance performance, and it is sponsored by Philip Morris Companies on Page 2.

Q. On the first page, it's sponsored by other entities. Can you tell me --

A. Right. The --

Q. Let me finish my question.

A. I'm sorry.

Q. Can you tell me what those entities are?

A. On the first page, it also says it's sponsored by Panhandle Eastern Corporation and Banque Paribas. My Brazilian isn't very good, my Portuguese. B-a-n-q-u-e P-a-r-i-b-a-s.

Q. And will your testimony in this case be limited to the fact that Philip Morris sponsored an Alvin Ailey dance performance?

A. Will it be limited to that?

Q. I'm trying to ascertain what your opinion at

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trial will be regarding this advertisement.

A. Well, this advertisement is targeted -- it's certainly -- it's an African American performance group.

Q. Do Caucasian people attend Alvin Ailey dance performances?

A. I would imagine they do, but -- I would imagine they do.

Q. Do Hispanic individuals attend Alvin Ailey dance performances?

A. I would imagine that they do.

Q. Do Native Americans attend Alvin Ailey dance performances?

A. I would imagine they do.

Q. Is there anything else that you intend to opine about with respect to this advertisement?

A. Well, relative to sponsorship as to what kinds of events or performances are sponsored by tobacco-related companies.

Q. Is there anything wrong with a company sponsoring an Alvin Ailey dance performance, Professor Stout?

A. Anything wrong with it?

Q. That's my question.

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A. I'm not quite sure I know what you mean. 10:2
Q. I'm asking you if, in your opinion, there is anything wrong with Philip Morris or any other company sponsoring an Alvin Ailey dance performance? 10:2
A. Well, I'm sure that different companies sponsor a number of different types of performances. 10:2
Q. I'm asking specifically about an Alvin Ailey dance performance. 10:2
A. Well, obviously, it's sponsored by -- it has multiple sponsors. 10:2
Q. Is there anything wrong with sponsoring an Alvin Ailey dance performance? 10:2
A. It's kind of a moral judgment. I don't know that I'm qualified to make moral judgments on right and wrong. 10:2
Q. Is there anything improper about sponsoring an Alvin Ailey dance performance? 10:2
A. And improper is different from wrong? 10:2
Q. In some lexicons. 10:2
A. It still seems like it's a -- if one looks at the evidence before us, we see a performance that is sponsored by a company. And so based on that, I look at those kinds of pieces of 10:2

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information in forming my opinion.
Q. Do you intend to offer any testimony at trial in this case to the effect that it was improper for Philip Morris to sponsor this Alvin Ailey dance performance and be noted as such in their advertisements?
A. Again, I don't know if it's appropriate for me to make moral judgments in that way, right or wrong.
Q. So you have no opinion?
A. My opinion is -- concerns the nature of the types of events or performances that are sponsored by tobacco-related companies.
Q. Do you have an opinion with regard to tobacco companies sponsoring dance events?
A. Sponsoring dance events?
Q. Correct.
A. Relative to?
Q. Any -- any other events.
A. Obviously they do sponsor dance events.
Q. And what will your opinion be with regard to Philip Morris' sponsorship of dance events?
A. That they do sponsor dance events.
Q. And that is the sum of your testimony with regard to Philip Morris' sponsorship of

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events? 10:23
A. Well, there are numerous -- I believe in the collection there are numerous types of events that are sponsored by tobacco-related companies. 10:21
Q. And is the entire sum of your testimony at trial going to be that Philip Morris and other tobacco companies sponsor events? 10:21
A. That's part of it. 10:23
Q. What's the rest of it? 10:23
A. Well, it's the type of the events and -- the type of the events and who's in attendance at the events. 10:21
Q. What type of events do -- in your opinion, do tobacco companies sponsor? 10:23
A. Well, I think if you've looked through the materials, you've seen that there's evidence of a number of types of events that are in here. There's sport-related events. I believe that's in my deposition statement. So sports-related events and -- including car or auto and motorcycle, rodeo and cultural events, dance, concerts. 10:23
Q. Just to finish up this one area before we move on to your precise opinions, Professor 10:24

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Stout. It's my understanding that you have obtained documents that you intend to rely on to support your opinions in this case from plaintiff's counsel, materials from your own files, materials from your students' files, and your -- documents you obtained from DOC. Are those all the sources of documents that you can recall at this time?

A. I believe that's all I can recall at this time, yes.

Q. Is there any independent research, apart from reviewing your own files and requesting that your students obtain materials for you, that you conducted to form the opinions you will render in this case?

A. Independent research, meaning?

Q. Do you know what independent research means?

A. Well, I consider it in looking at information and interpreting that, that that -- I would define that as independent research.

Q. Did you go to any libraries and look anything up, conduct any research in that manner?

A. I did not do -- did not personally do library research, no.

Q. Did you conduct any studies or surveys?

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A. Of? 10:2
Q. Tobacco advertisements, tobacco promotions, point of sale, billboards? 10:2
A. I didn't conduct any primary research. 10:2
Q. We have premarked Stout Exhibit Number 6, Professor, and that is a copy of your expert disclosure statement. Professor Stout, how did this statement come into being? 10:2
A. The disclosure statement? 10:2
Q. Correct. 10:2
A. I was requested to author a statement of the opinions that I would be rendering at the -- certainly during disclosure and I assume at the trial. 10:2
Q. Did you write this document? 10:2
A. I did author this document. 10:2
Q. Because I think you testified earlier that you had not and did not expect to draft any reports relative to your testimony in this case. 10:2
A. That's true. I guess I wouldn't define this as a report, but that may be the semantics. 10:2
Q. Professor Stout, did you actually type this document? 10:2
A. This document here? 10:2

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Q. Stout Exhibit 6. 10:27
A. Right. 10:27
Q. Did you type that document? 10:27
A. This copy, I did not type, no. 10:27
Q. Who typed that document? 10:27
A. It was prepared -- well, I'm not sure who typed it, and I assume it was prepared at Nix law firm. 10:27
Q. Who prepared it? 10:27
A. I don't know exactly who prepared it. I had authored it. 10:27
Q. How did you author it? 10:27
A. I had submitted the text for the document up into probably part of Page 3, which listed the materials that had not yet been received. 10:27
Q. Were there revisions to this document that you provided to plaintiff's counsel? 10:27
A. It was -- this is the result of some revisions, yes. 10:28
Q. Are the revisions that you can recall at this time that were made to the document that you provided to plaintiff's counsel summarizing the opinions you will give in this case? 10:28
A. I'm sorry. What is the question? 10:28
Q. As you sit here today, can you recall the 10:28

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revisions that were made to the document that you provided to plaintiff's counsel?

A. Well, I believe when I had first submitted my opinions that they were not detailed enough for the type of document that was required for the case.

Q. Did plaintiff's counsel assist you in providing additional detail to your opinions?

A. No. I was asked to then write additional detail and submit that, which I did.

Q. Was it further -- was this document further revised?

A. It was final, final typed.

Q. Are there any categories of documents that we haven't discussed in the last hour that you have used and relied on in arriving at the opinions which are summarized in Stout Exhibit Number 6?

A. Any specific documents?

Q. Any categories of documents that we have not previously discussed.

A. I don't recall that there are. My opinions obviously had -- I was basing my opinions on my education and knowledge and expertise, as well as the physical documents that we have.

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Q. Do you anticipate, Professor Stout, testifying about any specific advertising campaigns? 10:29
A. Specific advertising campaigns? 10:29
Q. Uh-huh. 10:29
A. I believe that I will be looking at, reviewing documents to speak to different campaigns. 10:30
Q. Professor Stout, do you know when this case is set for trial? 10:30
A. I believe it's September 29th. 10:30
Q. And today is August 22nd. 10:30
A. That's correct. 10:30
Q. It's a little more than a month away. 10:30
A. Right. 10:30
Q. Do you plan to continue to review documents relative to tobacco advertisements to form your opinions in this case? 10:30
A. Well, it depends. Obviously, I will be looking through the documents that I have again, and I don't know what the status is of other documents that might be made available to me before September 29th. 10:30
Q. So is it your opinion, Professor Stout, that your work in this case is not done? 10:30

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A. I believe that it would not be done, no, that it's ongoing. I believe that's in the disclosure statement.
Q. Have you reached opinions in this case?
A. I have opinions, yes, at this point in time.
Q. Professor Stout, as you sit here today, do you anticipate testifying about any specific cigarette advertising campaigns at trial?
A. I anticipate that I could, yes.
Q. Do you anticipate that you will?
A. I'm not exactly sure about the procedure at trial, so I'm not exactly sure if I am questioned about certain things.
Q. What cigarette advertising campaigns are you prepared to offer opinions about?
A. Well, there are numerous -- I have been able to review numerous ads for different campaigns, and so I will be commenting on advertising. Whether or not a campaign constitutes an entire -- an advertising campaign has a definition in my mind, and I'm not sure I have access to all the information that would allow me to be able to comment on an entire campaign.
Q. Well, I understand, Professor Stout, that you

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have reviewed a lot of materials in this case provided by plaintiff's counsel, but my question to you is, as you sit here today, do you plan to offer opinions with regard to specific advertising campaigns? 10:3

A. I would imagine that I would, yes. 10:3

Q. What are those advertising campaigns? 10:3

A. Well, they would be likely to include the Camel campaign. 10:3

Q. What Camel campaign? 10:3

A. Well -- all right. There's where we're getting at campaigns then. So -- 10:3

Q. Do you know how long Camel cigarettes have been marketed? 10:3

A. I think since 1913 and thereabouts. 10:3

Q. And so there are a variety of cigarette -- 10:3

A. Right.

Q. -- Camel advertising campaigns that have existed over that period of time. What Camel advertising campaigns do you plan to offer opinions about? 10:3

A. So I sense you're defining campaign, then, as something that's either ongoing or very specific that a marketing plan was written up and that X number of executions were going to 10:3

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be run over a period of time.
Q. Well, you're the expert. You tell me what a campaign is. 10:3
A. Well, I think we're working on different definitions then. 10:3
Q. So you tell me what yours is. 10:3
A. I do not have enough information that's been made available to me to be able to comment in a complete sense on the entirety from the formulation to the conclusion of a -- of an advertising campaign. So the nature of my opinions, then, will, unless I have -- am privy to additional documents to be able to review prior to testimony, will not be focusing on a specific campaign, as I sense you're defining it. It will be more general. The comments will be more general. 10:3
Q. So unless you obtain additional documents from plaintiff's counsel, you are not prepared, as you sit here today, to offer opinions regarding specific cigarette advertising campaigns; is that correct? 10:3
A. Depending on how we're defining campaigns here. So, as I say, if a campaign has -- if there's an advertising plan that's part of a 10:3

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marketing plan that has objectives that are set and a time frame that the ad is going to run from January 1st, 1996 to January -- or till December 31st, 1996, I don't have privy to campaign plans for all of the brands that I have advertising for in the documents. 10:34

Q. Professor Stout, do you anticipate testifying about any specific cigarette advertisements at trial? 10:34

A. I would anticipate that I would be looking at advertisements at the trial, yes. 10:34

Q. Do you anticipate that you are going to sit in the witness box and look at advertisements, or do you anticipate that you will provide opinions at trial regarding cigarette advertisements? 10:34

A. I imagine I will be providing opinions. I will be using the advertisements as a way to illustrate opinions that I would be offering. 10:35

Q. And, Professor Stout, what advertisements do you anticipate offering opinions about? 10:35

A. I'm not sure at this time I can tell you all of the exact advertisements out of -- 10:35

Q. Why don't you do the best you can. 10:35

A. Well, I believe that I would be looking at 10:35

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relative to issues on segmentation, targeting and placement. 10:35

Q. Well, I understand you are reading from your expert statement -- 10:35

A. Right.

Q. -- but I'm asking about specific cigarette advertisements. As you sit here today, what specific cigarette advertisements do you anticipate testifying about at trial? 10:35

A. I, at this point in time, don't have the exact advertisements all selected as to which ones I would be using to support my general opinions. 10:35

Q. Professor Stout, you understand that the trial begins a little over a month from today; is that correct? 10:35

A. That's correct. 10:35

Q. And you understand that I have 12 hours to depose you in order to obtain information regarding the opinions and actually obtain the opinions that you will offer at trial in this matter. Do you understand that? 10:36

A. I do. 10:36

Q. And as you sit here today, you cannot tell me what cigarette advertisements you intend to 10:36

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opine about at this trial; is that correct? 10:3
A. Well, I guess I'm not -- I don't know what to 10:3
anticipate at the trial, so I'm not sure if, 10:3
like I say, I'm making a presentation or if 10:3
I'm going to be queried. And so if I'm 10:3
making a presentation, then that would be a 10:3
different mode of preparation than that I'm 10:3
going to be queried on specific without 10:3
knowing what the questions are ahead of time. 10:3
Q. Do you think at a jury trial that expert 10:3
witnesses provide presentations or are asked 10:3
direct questions by counsel? 10:3
A. Well, I know that they -- well, I assume that 10:3
they are asked questions. 10:3
Q. What cigarette advertisements do you 10:3
anticipate you will be asked questions about? 10:3
A. I would imagine anything that was in the 10:3
documents. 10:3
Q. As you sit here today, do you have opinions 10:3
that you will render at trial regarding 10:3
specific cigarette advertisements? 10:3
A. I will be using advertisements to -- as part 10:3
of my opinions, as I said, on issues relative 10:3
to segmentation and targeting. 10:3
Q. What advertisements will you use relevant to 10:3

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your testimony on segmentation and targeting? 10:3
A. I will be looking at advertisements that -- 10:3
to illustrate where the ads are placed and 10:3
who would be likely to be looking at those 10:3
ads, and their -- 10:3
Q. I'm not asking about placement. I'm asking 10:3
about specific ads. What specific ads will 10:3
you use? 10:3
A. I'm not prepared to give you the specific ads 10:3
at this time. 10:3
Q. Are you prepared to tell me at this time what 10:3
your opinions regarding cigarette 10:3
advertisements will be? 10:3
A. In -- well, I believe I am. 10:3
Q. What opinions are you prepared to provide me 10:3
today that you will provide at trial 10:3
regarding specific cigarette advertisements? 10:3
A. As I just said, I'm not prepared to give you 10:3
the list of specific cigarette advertisements 10:3
today. 10:3
Q. As you sit here today, do you have opinions 10:3
relative to specific advertisements? 10:3
A. I do. But as I say, I'm not -- I do, but I 10:3
do not have the exact -- I mean, I can't pull 10:3
exactly how -- which particular 10:3

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advertisements I will use as examples or illustrations. 10:39
Q. What opinions do you have regarding specific cigarette advertisements? 10:39
A. Should we go through then? 10:39
Q. I'd like to know what your opinions are. That's why I'm here. 10:39
A. Right. On each specific ad or -- 10:39
Q. On specific cigarette advertisements. 10:39
A. Obviously, I've used this as a set of resources, and it's -- advertisements, excuse me, as well as other things that I have viewed then to form opinions relative to how advertising targets and segments. 10:39
Q. And what specific cigarette advertisements do you plan to use at trial to illustrate in your opinion tobacco industry's segmenting and targeting? 10:40
A. Okay. I would be using -- well, there are a number of things in here. It would take a while to go through. I'm really not prepared to go through the whole pile at this time. 10:40
Q. Professor Stout, at the bottom of the first paragraph of your expert disclosure there is a sentence that states, "Her research has 10:40

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included an examination of health promotion messages and social marketing issues." Do you see where I'm reading? It's actually in the first paragraph just under your name and address. 10:4

A. Right. 10:4

Q. It's the last sentence of that first paragraph. 10:4

A. I see it, yes. 10:4

Q. And your research has included an examination of health promotion messages and social marketing issues; is that correct? 10:4

A. That's true. 10:4

Q. What health promotion messages have you examined? 10:4

A. I have been examining different messages over time. I certainly have done primary research on messages relative to HIV prevention and drinking and driving. 10:4

Q. Have you done any primary research on health promotion messages relative to tobacco? 10:4

A. Not directly, no, although, as I said, work that I did on the Minnesota heart health campaign, smoking was one of the risk factors in that cardiovascular campaign. 10:4

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Q. And in what sense did you study tobacco as a risk factor in that campaign? 10:41
A. Well, it was one of the -- it's one of the risk factors for cardiovascular disease, so the campaign was going to target the different risk factors. 10:41
Q. And did you do primary research on tobacco in connection with the heart health program? 10:41
A. We would have been collecting information on all of those. I worked on the project that was collecting information on all of the numerous behavioral risk factors, of which smoking was one. 10:42
Q. You testified that you have collected information relative to those risks factors. What type of information? 10:42
A. There -- part of the project was primary research where they did surveys and the like, so I was a member of the team. It was not primary research that I was a primary investigator on, but there were multiple investigators on that. 10:42
Q. Did you develop an anti-cigarette educational campaign in connection with your work with the heart health organization? 10:42

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A. No, I did not.
Q. Looking specifically at your opinions, Professor Stout, and specifically at sub A, mentions in the first sentence that you will provide an evaluation and analysis of cigarette marketing and promotion campaigns. And again, I don't want to cover area that we have covered at great length, but is it my understanding that you were not prepared as you sit here today to tell me what that evaluation and analysis of cigarette marketing and promotional campaigns will be?
A. I'm sorry. Where are you reading?
Q. I'm reading from the first sentence of sub part A.
A. Okay. Well, in general, I cannot -- as I said, I cannot at this point give you ad for ad as to which ad I would use to support.
Q. Well, in this sentence, you use the word cigarette marketing and promotion campaigns. What cigarette marketing and promotion campaigns were you referring to?
A. Well, I was looking at the totality of the information that I had that was provided to me.

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Q. As you sit here today, do you know what cigarette marketing and promotion campaigns you intend to offer an evaluation and analysis of at trial? 10:44

A. Well, we're in that semantic issue with campaigns again. 10:44

Q. Well, you use the word campaigns in your expert disclosure, Professor Stout, so with all due respect, I'm trying to find out what campaigns you intend to testify about. 10:44

A. That's true. 10:44

Well, I would be testifying about the -- several of the -- several of the campaigns; although, as I said, I don't have complete information at this time. But using the advertisements to illustrate points relative to segmentation and targeting and placement. 10:44

Q. Which -- I'm sorry. Which campaigns? 10:44

A. Well, I can't speak to all of them, but I know that certainly, I would be looking at the Camel campaign. 10:45

Q. And what testimony will you provide relative to the Camel campaign -- and I'm sorry. I'm unfamiliar. As we discussed before, there 10:45

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are many Camel campaigns. 10:45
A. Right. 10:45
Q. Can you tell me what Camel campaign you will provide an evaluation and analysis of? 10:45
A. Well, I will be speaking relative to the different campaigns, really, I suppose. Obviously, there are numerous, numerous executional renditions that have been used in Camel. The most -- one of the more recent ones obviously is the Joe Camel campaign, but part of my opinion would look at the advertising as it's -- as it's presented over time, I want to say, in some sense, because there are ads from across time here. 10:46
Q. Have you done the historical analysis of cigarette advertising? 10:46
A. No, I have not. 10:46
Q. Have you done historical analysis of advertising for any other consumer product in the course of your career? 10:46
A. I don't believe I have, no. 10:46
Q. What opinions do you intend to offer regarding the Joe Camel campaign? 10:46
A. Well, my opinions would focus on the nature of the -- what is in the ad and where the ad 10:46

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is placed and who is likely to be exposed to the ad, based on that. 10:46

Q. Let's look first at what is in the Joe Camel ad campaign. What will your testimony be with respect to what is in the advertising campaign? 10:47

A. Well, I would look at the content of advertising and other -- well, the content of the advertising. 10:47

Q. What will your testimony be regarding the content of the Joe Camel advertisements? 10:47

A. The testimony would have to do with the nature of the visual images in the campaign and relative to any verbal images that would be in there. 10:47

Q. What visual images do you plan to opine about at trial relative to the Joe Camel campaign, Professor Stout? 10:47

A. Well, there are always many images. One is obviously the character himself, as well as other images that would be in the different -- different ads in the campaign, so not all of the executions are similar. 10:48

Q. Do you -- do you intend to opine regarding Joe Camel as a cartoon at trial? 10:48

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A. Well, clearly, as a spokesperson for a brand, he is unique among other cigarette brands.
Q. Is he -- but as we discussed yesterday, it is not unique for consumer products or services to utilize cartoons in their advertisements; is that correct?
A. That's correct.
Q. So he is unique from other brands of cigarettes because he is a cartoon; is that correct?
A. That is correct, yes.
Q. So RJR sets itself apart from other brands by using the RJR -- excuse me, by using the Joe Camel cartoon; is that correct?
A. It does distinguish that brand from other brands based on -- as all ads do, based on who or what is used in the imaging of the ad.
Q. Have you ever studied the use of cartoons as endorsers of consumer products?
A. I have worked with a doctoral student who has worked on that, yes.
Q. Looking back at your article regarding the use of endorsers in magazine advertisements, which has been marked, I believe -- I'll just reach across, as Stout Deposition Exhibit

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Number 3 -- 10:49
A. Right. 10:49
Q. -- and that is an article that you coauthored with Young Sook Moon, and in the bottom paragraph in the left-hand side, you discuss the types of endorsers that can endorse a consumer product. You state, "An endorser can be an identifiable person, an unidentifiable, e.g., a typical consumer, a company or organization, or an inanimate figure," paren, "(e.g., a cartoon character)," end paren. Did I read that correctly, Professor Stout? 10:49 10:50 10:50 10:50 10:50 10:50 10:50 10:50
A. You did. 10:50
Q. In this research, did you study the use of inanimate figures, namely, cartoon characters, as endorsers for consumer products? 10:50 10:50 10:50 10:50
A. In this study, I don't believe that that was a focus of the study. 10:50 10:50
Q. Have you ever done primary research on the use of inanimate figures, namely, cartoon characters, as endorsers for consumer products? 10:50 10:50 10:50 10:50
A. As I just said, I have supervised a student 10:50

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who has done a master's thesis and a dissertation on that. 10:5

Q. Do you consider that primary research you can call your own? 10:5

A. It would be different from primary research that I would call my own. 10:5

Q. And is there a reason in this research you did not study inanimate figures, e.g., cartoon characters, as endorsers of consumer products when you specifically enumerated it as a type of endorser in the second paragraph of your article? 10:5

A. I think there's some confusion here because I'm not referring to research that's done for this article. I'm referring to some other research. 10:5

Q. And I'm referring specifically to this article, Professor Stout. And I'm asking you: You have listed cartoon characters as one form of endorser. I notice from the content of the article that you studied all other types that were mentioned, with the exception of cartoon characters. And my question is, why did you not study cartoon characters in the course of the research 10:5

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encapsulated in this article? 10:51
A. That was not the focus of this particular 10:51
study, and so we were not looking -- we were 10:51
looking more specifically at celebrities. 10:51
My -- I would have to go back to the original 10:51
sample to see relative to how many inanimate 10:51
figures that we might have come upon in any 10:51
ads. 10:52
Q. Well, you say you focused on celebrities in 10:52
this -- 10:52
A. We were looking at --
Q. I need to finish my sentence. 10:52
A. I'm sorry.
Q. You mention that you focused on celebrities 10:52
in the course of this research. I'll direct 10:52
your attention to Page 541, where you used 10:52
four types of endorsers identified based on 10:52
previous research; celebrities, the typical 10:52
consumer, the expert, and the top corporate 10:52
official. And I notice that cartoon 10:52
characters are not enumerated on that list. 10:52
My question to you, Professor Stout, is why? 10:52
A. At this point in time, which is in the -- 10:52
this is probably published in, what, 1990, or 10:52
in the -- there was not much research done 10:52

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and not a lot of understanding about those types of characters. And so we probably elected -- it's hard for me to recall because this study was done quite a while back, but we probably elected not to use cartoon characters or inanimate characters in this. As well, I think we were looking at probably, well, relative to the products. I can't recall exactly why we didn't, but certainly -- certainly, there wasn't a lot known about that category of character. Certainly, a lot less was known about that category than there is now, relative --

Q. So it's your --

A. -- to research that's been done.

Q. I apologize. So it's your opinion that a great deal more research has been done regarding the use of cartoon characters as endorsers of consumer products?

A. Yes, there has been.

Q. And you have done none of that research; is that correct?

A. I have done none of that as the primary researcher. I have supervised research in that area, though.

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Q. You have supervised one student with regard to research in that area; is that correct? 10:5
A. That -- two students, I think. 10:5
Q. Are you going to rely on your students' work as a basis of the opinions that you will provide in this case? 10:5
A. Well, obviously, what I know as a result of having supervised that work I assume is part and parcel of the knowledge that I would be using. 10:5
Q. Apart from distinguishing -- strike that. 10:5

Looking back at your expert disclosure, under subpart A, you state -- actually, it isn't really an opinion, with all due respect, Professor Stout. It states, "Specifically, but without limitation, Doctor Stout intends to offer the following opinions at trial: Evaluation and analysis of cigarette marketing and promotion campaigns with emphasis on segmentation, targeting, and placement of cigarette advertising and promotions in the State of Texas." 10:54

What will your opinions be relative to the evaluation and analysis of cigarette 10:55

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marketing and promotion campaigns with emphasis on segmentation, targeting, and placement of cigarette advertising and promotions in the State of Texas? 10:55

A. My opinions would be that -- that there -- that there is a -- that there is placement of the advertising, that advertising is placed such that will reach people that are outside the target, and also, that it does target specific groups. 10:55

Q. Professor Stout, would you agree with me that all advertising reaches people that are not users of the product? 10:56

A. I don't know that I could agree that all advertising does, but certainly some advertising does. 10:56

Q. Would you agree with me that most advertising does? 10:56

A. I might -- I don't have a sense of how much advertising does, actually. 10:56

Q. Is that commonly referred to as spillover? 10:56

A. Spillover or waste, right. 10:56

Q. Do you -- I think we have established yesterday you do not have a dog; is that correct? 10:56

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A. That's correct. 10:5
Q. Do you see advertisements for dog food? 10:5
A. I probably am exposed to some. I can't recall any right now. 10:5
Q. Are you in the market for dog food? 10:5
A. Not at this time, no. 10:5
Q. So you -- so those advertisements for dog food have been placed such that they do reach people outside the target market; is that correct? 10:5
A. I imagine that people outside of the target market are exposed to them, yes. 10:5
Q. Does that happen frequently? 10:5
A. One would hope it -- well, depending on one's budget, it would be -- as a budgetary matter, I would assume that the marketer would hope that it wouldn't happen a lot. But that's an assumption. 10:5
Q. What will your testimony be with regard to cigarette advertising targeting specific groups? 10:5
A. That -- that brands, in fact, or advertising for brands are -- advertising for brands is targeted to specific groups, and I believe I have listed here the -- as relative to some 10:5

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target segmentation, Hispanics and African Americans in Texas. 10:57

Q. So is it your testimony that cigarette advertisements are targeted to influence brand choice among certain groups of people? 10:57

A. That's part of it, yes. 10:58

Q. What's the rest of it? 10:58

A. I'm not certain at this time. 10:58

Q. You go on in your statement that, specifically, cigarette manufacturers have promoted and continue to promote cigarettes in national magazine publications which are sold, distributed, and viewed in the State of Texas. Cigarette manufacturers have promoted and continue to promote cigarettes through advertising featured in local newspapers in Texas. Cigarette manufacturers have sponsored and continue to sponsor events which feature performances in Texas and were duly promoted through advertising in posters. Does that accurately summarize the testimony that you will provide with regard to cigarette advertising, marketing and promotion? 10:58 10:59

A. Well, I believe that it does do -- that that 10:59

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includes much of what I will testify about, yes. 10:5

Q. Are there any conclusions that you will draw, based on what I have just read? 10:5

A. I will draw conclusions, yes. 10:5

Q. What are those conclusions? 10:5

A. The conclusions have to do with who has the opportunity to be exposed to the advertising, relative to the placement and promotions as well. So advertising and promotions. 10:5

Q. Who would be exposed to those advertisements and promotions in an effort to effect brand choice, Professor Stout? 10:5

A. It could be brand choice. It could be initiation or use of the product category. 10:5

Q. Is it going to be your opinion at trial that cigarette advertisements and promotions cause -- cause smoking initiation? 10:5 11:0

A. It would be my opinion that advertising in fact can have an influence when people decide to use a product category. 11:0

Q. So once a person decides to use a product category, the cigarette advertisement can have an impact. Is that impact brand selection? 11:0

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A. It would -- I would assume that it would include brand selection, yes.
Q. What else would it include?
A. I'm not certain at this time.
Q. Professor Stout, do you have any idea how many other products are marketed in precisely the same way that you have just described in this paragraph, namely, that they are promoted in national magazine publications which are sold, distributed, and viewed in the State of Texas, they are promoted through advertising featured in local newspapers, and they sponsor and continue to sponsor events in the State of Texas?
A. I would -- I'm not aware of how many, no.
Q. Is it your assumption that there are many products that are marketed and sold precisely that way?
A. I would imagine that there are, yes.
Q. Is there anything wrong with marketing and promoting your product in that way?
A. It's a moral judgment again.
Q. Do you intend to offer any opinions at trial that the cigarette companies did anything improper by marketing and promoting and

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advertising their products in the way I have just described? 11:0

A. I think what the evidence that I have looked at helps to establish that -- is that in fact these activities were ongoing in the State of Texas. 11:0

Q. And with all due respect, Professor Stout, so what? 11:0

A. Well, I believe the case has to do with the State of Texas. 11:0

Q. Well, but your testimony as you have summarized it is that these things took place in the State of Texas. And my question to you is, what opinions do you plan to offer, apart from the fact that these things took place in the State of Texas? What relevance do those events have? 11:0

A. Well, obviously, Texans were exposed to these events, and any kind of influence that advertising or marketing or promotion might have had would have likely have been -- would have been likely to occur because they -- because they were exposed to it in this state. I didn't articulate that very well. 11:0

Q. Why don't you try again. 11:0

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A. The point being that individuals in the State of Texas then were exposed to these advertising, marketing, and promotions, and as a result of that, then any influence that this may have on individuals is likely to have occurred for individuals in the State of Texas. 11:0

MR. McNEELY: We're starting our third hour. Can we take about a five-minute break? 11:0

MS. TYLER: I'd like her to just finish -- I'd just like to finish this one line of questioning before we break just so we can keep our subject matter straight. 11:0

Q. You mentioned any influence that advertising may have. Are you going to offer an opinion that advertising for cigarettes did have an influence? 11:0

A. I'm -- at this point in time, I'm not sure that I have access to evidence that makes a real clear-cut relationship there, but clearly, there's evidence in the literature about the effects of advertising and how it influences individuals. 11:0

Q. But as you sit here today, you are not 11:0

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prepared to provide me with an opinion of the influence that cigarette advertising has had; is that correct? Apart from the brand recognition and brand loyalty issues that we have discussed? 11:03 11:03 11:03 11:04 11:04

A. I don't have any -- any additional evidence that would make a sort of cause and effect relationship. 11:04 11:04 11:04

Q. Anything short of a cause and effect relationship that you are prepared to offer an opinion about at trial in this case? 11:04 11:04 11:04

A. Well, I have previewed reports, and certainly -- well, I don't know at this time. I don't know at this time. 11:04 11:04 11:04

MS. TYLER: Let's take a break. 11:04

(RECESS)

THE VIDEOGRAPHER: This is tape number two. We're back on the record at 11:13 a.m. 11:13 11:13 11:13

Q. Professor Stout, we're back on the record after a short break. Are you prepared to continue? 11:13 11:13

A. I am. 11:13

Q. Looking back at your list of opinions and continuing with the paragraph sub part A, you 11:13 11:13

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state, "Cigarette manufacturers have used and continue to use target segmentation to reach specific groups in Texas such as Hispanics and African Americans." What opinion do you intend to provide with regard to that statement?

A. Well, my opinion is that from the evidence that I have reviewed, that, in fact, cigarette manufacturers have used and continue to target segment so that advertising and promotions are directed to specific targets.

Q. To what effect, Professor Stout?

A. I, at this point, don't believe I have evidence relative to exact effects of that.

Q. So you will provide evidence at trial that the tobacco industry, in your opinion, has targeted specific groups, but you will not provide testimony relative to the impact, possible impact such alleged targeting might have had; is that correct?

A. At this point in time, I don't have any evidence that I -- that I would be relying on for that.

Q. Do you have any evidence that such alleged

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target segmentation had any impact at all? 11:1
A. Well, there's evidence relative to the 11:1
behavior among those groups, smoking behavior 11:1
among those groups in the state. 11:1
Q. And what evidence is that? 11:1
A. Well, there are surveys relative to -- Texas 11:1
health surveys relative to the incidence of 11:1
smoking among different groups of people in 11:1
the state. 11:1
Q. Well, I'm confused. You intend to testify at 11:1
trial that the cigarette companies used 11:1
target segmentation to reach groups in Texas, 11:1
and I'm trying to ascertain what your opinion 11:1
will be with regard to the impact, if any, of 11:1
such alleged target segmentation. 11:1
A. Well, again, I have reviewed evidence 11:1
relative to the smoking rates among these 11:1
groups, and I'm -- what I'm providing opinion 11:1
on has to do with evidence, other evidence 11:1
that I have reviewed that shows that there is 11:1
advertising and marketing that has been done 11:1
by cigarette manufacturers that's been 11:1
targeted to these groups. 11:1
Q. Is it your -- as you sit here today, do you 11:1
intend to offer an opinion that the smoking 11:1

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rates of certain groups were in any way impacted by the defendant's alleged target segmentation? 11:1

A. I believe the suggestion could be made that if, in fact, advertising and marketing operate as they are intended, that there would be some relationship between the behavior and the monies that were put behind targeting those groups. 11:1

Q. Are you prepared to draw a cause and effect relationship at this time? 11:1

A. I don't believe I have evidence at this time to draw a cause and effect relationship. 11:1

Q. So as you sit here today, you have no evidence to draw a cause and effect relationship between the smoking rates of certain groups of people and the alleged target segmentation that you intend to opine about; is that correct? 11:1

A. I don't believe with what I have reviewed that I do, no. 11:1

Q. You go on in this statement to say the cigarette manufacturers' national strategies for advertising and promotion were implemented in Texas. Is that the sum total 11:1

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of your opinion in that regard, simply that their national strategies were implemented in Texas as they were implemented in every other state? 11:1

A. Well, my opinion is that in looking at the things that I have reviewed, that it's clear that national campaigns or advertisements or promotions that have been done by the cigarette manufacturers have, in fact, been implemented or run in Texas as well, so Texans have been exposed to these advertising and marketing and promotion messages. 11:18

Q. As you sit here today, do you think that you know what all of the cigarette manufacturers' national strategies for advertising and promotion are? 11:18

A. I imagine I have not had access to all that information, no. 11:18

Q. So how do you know that the cigarette manufacturers' national strategies for advertising and promotion were implemented in Texas if you don't know what they were? 11:18

A. Well, I have evidence that national advertising and promotion were run in Texas so that they are -- 11:18

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Q. So will your testimony be that some of cigarette manufacturers' national strategies for advertising and promotion were implemented in Texas? 11:1
A. I don't believe it says "all" there. No, it would not be all. 11:1
Q. So it would not be all. It would be some? 11:1
A. It would likely be some. 11:1
Q. And how do you know that some of the cigarette manufacturers' national strategies for advertising and promotion were implemented in Texas? 11:1
A. Because in the evidence that has been deposited, there are examples of advertisements that have been run in national publications, for example, that have been circulated or -- circulated or released in the State of Texas. 11:1
Q. So you have seen advertisements for cigarettes in the State of Texas. Is that the basis of your opinion? 11:1
A. That the cigarette manufacturers -- that ads that have been placed nationally have been -- have also been run in the State of Texas, yes. 11:1

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Q. Because as a resident of the State of Texas, you've seen them? 11:1
A. I have evidence that they have appeared in the State of Texas. 11:1
Q. To what effect, Professor Stout? 11:2
A. To what effect? At this point in time, I don't have evidence of -- evidence that would enable me to be able to determine an exact effect. 11:2
Q. Do you have evidence that would enable you to determine an inexact effect as a result of the implementation of some of the cigarette manufacturers' national strategies for advertising and promotion? 11:2
A. Well, I feel I have evidence that would -- that would allow -- it has allowed me to make the opinion that, in fact, individuals in the State of Texas have had the opportunity to be exposed to these national campaigns, yes. 11:2
Q. To what effect, Professor Stout? 11:2
A. I think I just said that I didn't have evidence that would allow me to, at this point in time -- 11:2
Q. You mentioned that you didn't have evidence that would enable you to determine the exact 11:2

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effect of this implementation, and my question is, do you have evidence that would enable you to determine what inexact effect they might have had or any effect they might have had?

A. I have -- I don't believe that I have any evidence at this time that outlines a cause and effect relationship, no.

Q. A cause and effect relationship between what?

A. The programs that have been run, the national programs that have been run in Texas.

Q. And?

A. And the relationship with smoking behavior.

Q. So as you sit here today, you have no evidence that outlines a cause and effect relationship between programs that have been run respective to cigarette advertising and smoking behavior; is that correct?

A. I believe relative to -- we were discussing the national -- the national strategies as they run in Texas.

Q. Relative to the national strategies, some of which have been implemented in Texas, as you sit here today, you have no evidence that outlines the cause and effect relationship

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between those strategies being implemented and smoking behavior; is that correct? 11:2
A. I don't believe I have any documents in my possession at this time, no. 11:2
Q. That would provide you with such evidence; is that correct? 11:2
A. That's correct. 11:2
Q. Moving on to your second paragraph, you mention that you will provide an evaluation and analysis of cigarette marketing and promotions at events, specifically including strategies and tactics at sporting and music events in Texas. What will your testimony be in regard to that statement? 11:2
A. That cigarette manufacturers place -- that they do marketing and that they have promotions that are at events in Texas where -- that are family-oriented events where individuals are exposed to those marketing tactics, individuals who are outside of the target market as well as underage. 11:2
Q. Other consumer products also have ads and run promotions at these types of events; isn't that correct, Professor Stout? 11:2

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A. That's correct.
Q. And those advertisements at these events would reach both users of the product and nonusers; is that correct?
A. That's likely, yes.
Q. Will you opine regarding an effect of the marketing and promotions that have been run at these sporting and music events in Texas?
A. I have some evidence that suggests that -- that individuals who are exposed to these kinds of promotions, in fact, retain the knowledge from the exposure.
Q. And what is that evidence?
A. There is evidence provided here.
Q. Can you cite me any?
A. There is one particular -- and I could go through the whole pile, but relative to racing and children's publications for racing where it's clear that the children process what the logos are that they see at the events.
Q. Is it your opinion that the cigarette manufacturers place advertisements for cigarettes in children's publications for racing?

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A. I don't believe that I have seen any cigarette advertisements that were placed by cigarette manufacturers in children's magazines or racing publications.

Q. So it's your opinion that individuals exposed to certain advertisements retain knowledge regarding those advertisements?

A. I have evidence to suggest that individuals in this -- well, yes, that individuals do, in answer to your question.

Q. Professor Stout, do you know how many advertising messages the average consumer sees every day?

A. It's a large number. It's not -- it's at least a thousand, I think. It's a very large number.

Q. And do you know how many of those advertisements the average consumer can recall the following day?

A. A small proportion of the number that they are exposed to.

Q. Can you give me an estimate?

A. I don't have a figure right off the top of my head, no, on what percentage people recall.

Q. Are you familiar with the literature

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regarding advertising messages and recall? 11:2
A. I am familiar with some of that, yes. 11:2
Q. Does the number five sound logical? 11:2
A. It could be. 11:2
Q. Do you know how many of these advertising messages -- do you know how many of these thousands of advertising messages people receive every day they can recognize the following day? 11:2
A. I don't have a number. 11:2
Q. Many advertising messages that we as consumers see every day are simply ignored, are they not, Professor Stout? 11:2
A. That is -- that is, I believe, true. 11:2
Q. And, in fact, a very large proportion are simply ignored; is that correct? 11:2
A. We probably do not consciously process many of the messages that we are exposed to. That's true. 11:2
Q. Do you think that these advertising messages have a subliminal effect upon us? 11:2
A. Well, I don't know if I'd use the word subliminal, but it's a question at what level of cognition it's processed, whether or not there is -- whether or not exposure to a 11:2

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message, even if I cannot recall it or recognize it, means that I didn't process it. 11:27
Q. The fact that individuals see over a thousand advertising messages every day and the fact that manufacturers are trying very hard to get their advertising message across in a very cluttered environment, are you familiar with what this phenomenon is called in advertising? 11:27 11:28 11:28 11:28 11:28 11:28 11:28
A. I'm sorry. I'm not sure I understand the question. 11:28 11:28
Q. Well, the fact that individuals see a thousand advertising messages a day and advertising agencies must fight to have their message observed -- 11:28 11:28 11:28 11:28
A. Right.
Q. -- is there a name for that phenomenon in advertising? 11:28 11:28
A. Well, you are trying to get sort of the top of mind from the individual, so that -- 11:28 11:28
Q. Does the word "clutter" mean anything to you? 11:28
A. Yes. Yes, it does. 11:28
Q. And what is clutter? 11:28
A. Clutter is where there are numerous messages in an environment, and it makes it difficult 11:28 11:28

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for individuals to process. 11:28
Q. And advertisers are worried about clutter, 11:2
are they not? 11:2
A. They are, that's true. 11:28
Q. Now, regard to advertisements at sporting and 11:2
music events, do you -- have you done a 11:2
systematic study of advertisements at 11:2
sporting and music events in Texas? 11:2
A. I have reviewed the videotapes that we 11:2
mentioned earlier today that -- of many hours 11:2
of events of this type that have been held in 11:2
Texas. 11:2
Q. Can you name for me the consumer products 11:2
that are advertised at sporting and music 11:2
events in Texas? 11:2
A. Well, it depends on what the event is. 11:2
Obviously, tobacco products, both cigarettes 11:2
and smokeless -- 11:2
Q. Let me stop you for one moment, Professor 11:2
Stout. Is it your understanding that 11:2
cigarettes are now advertised at sporting 11:2
events in Texas? 11:2
A. Well, they are promoted there. So if you 11:2
are -- if it's the difference between 11:2
promotions and -- if it's the difference 11:2

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between promotions and advertising or depending on how we're talking about sporting events, what constitutes a sporting event. 11:29 11:29 11:30

Q. Is it your position that there is signage for cigarette advertising at sporting events? 11:30 11:30

A. It is my position that there is. 11:30

Q. At the current time? 11:30

A. I believe so, in some locales. 11:30

Q. What locales? 11:30

A. I can't comment on that right now. The tapes that I have reviewed, though, are -- show that, in fact, that this has occurred. 11:30 11:30 11:30

Q. How recent are those tapes? 11:30

A. There is a range. I would have to check, but over the last several years, I would think. But I would have to check. 11:30 11:30 11:30

Q. So you mentioned that you have some evidence to suggest that individuals exposed to certain advertisements retain knowledge regarding those advertisements. My question to you, Professor Stout, is to what effect? 11:30 11:30 11:30 11:30

A. Well, at this point in time, I'm not sure what that effect would be. We retain information on a regular basis for use at a later time, and it could be implemented in 11:30 11:31 11:31 11:31

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one way or another. 11:31
Q. So, for example, someone who is not in a product category who would later choose to become part of a product category might use information that they had obtained from advertisements they had seen to make brand choice decisions; is that correct? 11:31
A. Well, they certainly might make -- they certainly might do that, yes. 11:31
Q. Do you think that that is what they would do? Do you think that that's an important role of advertising? 11:31
A. I think that it would help people, yes, to make brand selections, but it may also have other impacts as well. 11:31
Q. It may also have other impacts? What other impacts, Professor Stout? 11:31
A. It -- it may have influence on product category selection, for example. It may be combined with other aspects of the individual's background and the like to influence their behavior. 11:31
MS. TYLER: Could you read back the last part of that answer? 11:32
(The reporter read back 11:32

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(the requested testimony.

Q. Do you intend to opine at trial, Professor Stout, that cigarette advertising influences people to enter the product category of cigarettes? 11:3

A. Well, I believe that there's -- that there's some evidence relative to how advertising works essentially that -- that may be relevant here. 11:3

Q. You stated there is some evidence relevant to how advertising works here. My question is, do you intend to offer an opinion at trial that cigarette advertisements influence people to enter the product category of cigarettes? 11:3

A. I believe that I may be doing something like that, yes, or I may be doing that -- cigarette advertising may be included in a general type of process that consumers can undergo. 11:3

Q. I'm sorry. I didn't understand the last part of your answer at all. Cigarettes may be part of a process that people undergo? 11:34

A. Right. One of a -- if there is -- relative to the process, that it may occur for 11:34

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cigarette advertising as well. 11:34
Q. You may or may not be offering an opinion 11:34
regarding whether or not advertisements 11:34
influences people to enter the product 11:34
category of cigarettes, but you don't know? 11:34
A. What I was trying to do was qualify that 11:34
it's -- that cigarette advertising would be 11:34
a subset rather than the specific of like 11:34
cigarette advertising as distinct from any 11:34
other type of advertising. 11:34
Q. Professor Stout, are you prepared to offer a 11:34
cause and effect relationship between 11:34
cigarette advertising, marketing, promotion, 11:34
and an individual's decision to enter the 11:34
cigarette product category? 11:34
A. I don't believe that I have evidence at this 11:34
point in time that would enable me to do 11:34
that. 11:34
Q. Do you anticipate that your testimony at 11:35
trial would be that cigarette advertising, 11:35
promotion, and marketing is one of many 11:35
factors that influences consumer decision 11:35
making regarding entering a product category? 11:35
A. I believe that there are many factors that 11:35
influence product category decisions. I 11:35

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1		believe we enumerated a number of those	11:35
2		yesterday.	11:35
3	Q.	And as we discussed them yesterday, they	11:35
4		included needs, socio environmental factors,	11:35
5		background, demographic information quite	11:35
6		possibly, need for cognition, income,	11:35
7		lifestyle, personal experience, culture,	11:35
8		ethnic background, religion, self-esteem,	11:35
9		external versus internal locus of control,	11:35
10		personality, and impulse; is that correct?	11:35
11	A.	That was the list I believe that we	11:35
12		enumerated yesterday, yes.	11:35
13	Q.	Can you think of any more as you sit here	11:35
14		today?	11:35
15	A.	Not at this moment, no.	11:35
16	Q.	So all of those factors influence an	11:35
17		individual's decision about whether or not to	11:36
18		buy a product; is that correct?	11:36
19	A.	They are part -- they are part and parcel,	11:36
20		including, obviously, marketing and promotion	11:36
21		and advertising as well.	11:36
22	Q.	So marketing, promotion, and advertising are	11:36
23		just one of those many factors that influence	11:36
24		consumer decision making; is that correct?	11:36
25	A.	I believe that we had determined that	11:36

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decision making was a complex process as well as that of that list, that also other communication factors are variable, such as marketing, promotions, and advertising would also have an impact or an influence.

Q. But marketing, advertising, and promotion are just one of the many factors that we have just enumerated; is that correct? They are among the factors?

A. I believe that we had talked about the individual factors, yes. And so --

Q. Getting back to your opinion under sub B, Professor Stout, do you believe that people attend the events described in subparagraph B to watch or participate in the event or to look at the advertisements that are displayed there?

A. Well, I can't know exactly why everybody attends each event, but I would assume that they are there for the event rather than to purposely go there to seek out promotions.

Q. And apart from the -- and I want you to take a minute and read through this opinion, but apart from what is written here, namely, that cigarette manufacturers have promoted

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cigarettes at family-oriented events and that they have used promotions targeted to specific consumer segments and that the promotions employed by cigarette manufacturers may be attractive to young people, what opinions do you intend to offer, apart from the, what I would call statements that you are making in this paragraph? 11:3

A. Well, what I did was I reviewed the evidence, and as a result of that review, the -- at events that are in Texas, they tend to be family oriented, and individuals who are outside of the target market, as well as underage, are exposed to the promotions that are done at those events. 11:3

Q. And that is some of the natural spillover that you and I discussed when we were discussing the first paragraph in your expert disclosure; is that correct? 11:3

A. It is certainly spillover. 11:3

Q. Is there some -- is spillover not natural? 11:3

A. Well, I assume -- there's -- spillover is a waste -- spillover is a waste unless it's intentional. So -- 11:3

Q. Do you intend to offer an opinion at trial 11:3

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that cigarette manufacturers' spill over is intentional? 11:3
A. I intend to offer evidence that shows that there is spillover at such events. 11:3
Q. Do you intend to offer an opinion that that spillover is intentional on the part of the cigarette manufacturers? 11:3
A. I don't believe I have evidence at this time to indicate that it's intentional, to establish intent at this time. 11:3
Q. You also state in this paragraph, "The promotion tactics employed by the cigarette manufacturers are frequently of the sort attractive to young people." What will your opinion be in that regard? 11:3
A. The evidence that I have looked at shows the different types of promotions that are done at some of these events, and they do tend to be the types of promotions that young people would be attracted to. So -- 11:4
Q. Can you give me some examples? 11:4
A. Examples such as setting up like toy car races or -- well, what appear to be toy car races. Or let me be more or less specific. Games -- game kind of situations that are set 11:4

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up that young people would find very attractive.

Q. Can you be more specific? Because I don't know what you're talking about.

A. Well, as I say, one of the tapes that I have viewed shows at an event -- I can't recall whether it's toy cars -- it's either toy cars or it may even be a toy train, but set up like an electric train, which is something that young people would be attracted to. And this is set up as part of the promotion for the cigarette brand. I can't --

Q. Do you know what brand of cigarettes?

A. I can't recall the brand at the time, no.

MS. TYLER: I'm going to renew my request on the record for that video, Hugh.

A. So that's one example.

Q. And do you know that that particular kind of activity is attractive to young people?

A. I don't believe that I have empirical evidence to support whether or not young people like electric trains or racing car sets.

Q. So when you say that those are the kinds that are frequently of the sort attractive to

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young people, you are just assuming there; is that correct? 11:41

A. Well, what I said was I don't have -- yeah, I don't have any evidence. Obviously, those are the types of -- types of games that we might find at Toys R Us, for example, so I -- 11:41

Q. So you are assuming that those are the sorts of games that are attractive to young people; is that correct? 11:41

A. That's true. 11:41

Q. And to what effect, assuming for the moment that those are the types of game situations that are attractive to young people, what impact would that have, in your opinion? 11:41

A. Well, the individuals who are exposed to those situations then have the possibility of forming positive affect. They are obviously exposed simultaneously to the brand logo or whatever kind of promotion is being used at the time, and then whatever processing that might occur as a result of that may occur. 11:42

Q. So again, Professor Stout, these individuals may be exposed to advertisements and promotions and activities and may form a positive affect, as you call it, with that 11:43

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regard. And what impact will that have, in your opinion? 11:43

A. Well, there's some indication in the literature that shows that there may be -- there may be -- it may have influence at a later time. 11:43

Q. So as you mentioned before in your testimony, once an individual decides to enter a product category, the type of positive affect might influence their brand choice; is that correct? 11:43

A. That's possible that it might influence their brand choice. 11:43

Q. Anything else you can think of? 11:43

A. Well, it may also --

Q. And that you have empirical evidence to support? 11:43

A. I can't suggest anything else that I have empirical evidence to support. 11:43

Q. Looking at your expert disclosure at subparagraph C, you state, the role -- that you will opine regarding the role of marketing and influencing smoking behavior, including the effects of a strategic use of integrated marketing communications and the 11:44

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use of advertising in the communications mix. Have we discussed your opinions regarding the role of cigarette advertising, marketing, and promotion in influencing smoking behavior, Professor Stout? 11:4

A. Relative to my possession of any empirical research at this time or -- 11:4

Q. Relative to your possession of any evidence that would support any opinions that you have. 11:4

A. You mean as we have discussed A and B? 11:4

Q. Yeah. We have been discussing your opinions for some time. 11:4

A. Right. 11:4

Q. And I'm just trying to short-circuit a little bit, but at the same time, I want to be sure that I don't miss any of the opinions that you are prepared to offer at trial. And we have discussed smoking behavior, and I want to be sure that we have covered your opinions with regard to the role of advertising, marketing, and promotions in influencing smoking behavior as you have discussed it in subparagraph C. 11:4

A. Well, I believe that relative to subparagraph 11:4

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C, that one key point there is the use of integrated marketing communications so that -- that it is the combination of the advertising and the different promotions that are used. 11:45 11:46 11:46 11:46 11:46

Q. And in fact, using an integrated marketing communications approach, Professor Stout, is an important and valuable way to get brand information out to your customers. Is that not correct? 11:46 11:46 11:46 11:46

A. That is true. It is used to do that. 11:46

Q. It's an important and effective way to do it; isn't that correct? For all product categories? 11:46 11:46 11:46

A. Well, I don't know if I would be so broad as to say for all product categories. Certainly, there are times when one might choose not to use an integrated marketing communications mix, that they might limit their choices of communication tools in the mix. But certainly, the literature seems to evidence that you can create synergy by using a combination of communication tools. 11:46 11:46 11:46 11:46 11:46 11:46 11:46

Q. And, Professor Stout, yesterday when we were discussing how you would advise your students 11:47

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to enhance brand loyalty and brand recognition of their specific brand of toothpaste, you testified that you would encourage them to use an integrated marketing communications mix, did you not? 11:4

A. That is true. That is something that I would encourage the students to pursue in the classroom in doing their campaigns, yes. 11:4

Q. You mentioned transit advertising in this segment of your opinion, Professor Stout. What study have you done of transit advertising? 11:4

A. I'm sorry. Where is that? 11:4

Q. At the -- in the last sentence of that paragraph. 11:4

A. Okay. I don't recall that I have personally done a study of transit advertising. 11:4

Q. When you refer to transit advertising, are you referring to billboards? 11:4

A. No. Transit advertising typically applies more to mass transit, so it could be buses or trains or taxis. 11:4

Q. Have you studied billboard advertising? 11:4

A. I have not conducted primary research on that, no. 11:4

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Q. Do you know what categories of products and services are advertised on billboards? 11:48

A. I can't name an entire list at this point in time. 11:48

Q. Could you name for me a couple of categories of products and services that are advertised on billboards? 11:48

A. Well, there are national brands of different types of products. Billboards are also used on a local level for advertising where to find something like a hotel up the highway, et cetera. 11:48

Q. So tourism types of appeals? 11:48

A. Tourism. Public service announcements are often on billboards, as well as advertising for, as I said, national brands in consumer categories and other categories as well. 11:48

Q. And, Professor Stout, if I am driving down the highway in [DELETED] and I live in [DELETED] and I see a billboard for a hotel in [DELETED] I am not in the market for a hotel, seeing as I have a residence in [DELETED] So would that ad be spilling over on residents of [DELETED] 11:49

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A. At that point in time, the individual does not have the need, so they would unlikely be motivated to pay attention to that billboard. 11:4
Q. They are likely to just ignore it because they don't need a hotel. 11:4
A. Right. At that point in time, yes. 11:4
Q. But if I decided I wanted to stay in a hotel or I had guests from out of town who wanted to stay in a hotel, I might use that billboard to decide which hotel to recommend; is that correct? 11:5
A. You could have brand recognition from a billboard, yes. 11:5
Q. Is there any other function that that billboard would serve? 11:5
A. Relative to advertising? 11:5
Q. Relative to consumer behavior. 11:5
A. Not that I can think of at this moment. 11:5
Q. And you mentioned the strategic use of integrated marketing communications, and we've discussed that at some length here. What effect does that have on consumers, the use of an integrated marketing communications mix? 11:5
A. Well, as I said, you create synergy for your 11:5

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message through the use of multiple communication tools so that you should be more effective in your marketing. 11:5

Q. And as we discussed before in the toothpaste example, you create synergy which enhances brand recognition and brand loyalty; is that correct? 11:5

A. In the toothpaste example as we discussed, I believe that's how we discussed it, yes. 11:5

Q. With regard to cigarette smoking, does your opinion differ? 11:5

A. Well, certainly it will also enhance brand loyalty, but it also -- or can enhance certainly recognition or brand loyalty, but it also then affords more opportunities for individuals to be exposed to the message. 11:5

Q. And with respect to affording more opportunity for exposure to the message, Professor Stout, what effect would that have? 11:5

A. Well, it should -- it should make your -- your -- certainly it should have an impact on your campaign, so it should enhance your efforts to reach your goals in your campaign.

Q. I'm not sure I understand.

A. Well ---

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Q. You mentioned that it would afford more opportunity for exposure to a message, and I'm asking you what effect that opportunity for exposure to a message would have.
A. Well, the opportunity-- people need to be exposed before they can enact whatever -- whatever other goals the marketer is seeking.
Q. People can't be influenced by a message that they don't see; is that correct?
A. That's correct. Well, yes, that's correct.
Q. And as you mentioned, this opportunity for exposure to a message would enhance brand loyalty and recognition; is that correct? 11:5
A. It would be likely to enhance brand loyalty and recognition, yes.
Q. And what else would it do?
A. Well, depending on the way that the message is presented, it may have other -- it may have other influences for future behavior.
Q. And in the case of cigarettes, have we already discussed the impact that such advertising may have on future behavior here today?
A. We have discussed a lot today about the impact of advertising.

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Q. Why don't you tell me what impact that exposure to advertising would have on behavior in the future? 11:5
A. For? 11:5
Q. Cigarettes. 11:5
A. It is -- certainly it can create brand recognition, as we've just said, and at a point in time when individuals then are likely to enter the product category, that the messages that they have received via advertising and/or integrated marketing communications can have an impact on their behavior. 11:5
Q. So as we've discussed before, once an individual makes a decision to enter a product category, that exposure to an integrated marketing mix would help them decide what brand to select; is that correct? 11:5
A. That's -- yes, that would be correct. 11:5
Q. And do you intend to offer any other opinions which are supported by empirical or other evidence in this regard? 11:5
A. In regard to? I'm sorry. 11:5
Q. Impacting future behavior, based on exposure to messages. 11:5

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A. I'm sorry. What's the complete -- 11:5
Q. You said it can create brand recognition and 11:5
that once a person has decided to enter a 11:5
product category, that exposure to messages 11:5
can and would help them and assist them in 11:5
choosing a brand. And I'm asking you, do you 11:5
think that that exposure to messages has any 11:5
other impact that you intend to opine about 11:5
at trial? 11:5
A. I don't believe I have any empirical evidence 11:5
at this time or any -- any -- I don't believe 11:5
I have evidence at hand at this point in 11:5
time. 11:5
Q. To provide any additional opinions in this 11:5
regard? 11:5
A. Right, at this point in time. 11:5
Q. Subparagraph D discusses the use of imagery 11:5
and themes in cigarette advertisements and 11:5
marketing campaigns and the impact of imagery 11:5
and themes in cigarette advertisements on the 11:5
consumer and on the general public, 11:5
specifically including the use of various 11:5
creative execute -- executional variables 11:5
like endorsers and visual and verbal message 11:5
components. Defendant cigarette 11:5

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manufacturers employ imagery and themes in their advertising promotions which are likely to attract the attention of young people. For example, the use of cartoon-like characters in nonverbal messages that convey images of cool or independence are attractive to underage individuals.

Can you tell me what your testimony at trial will be with regard to the use of imagery and themes in cigarette advertisements?

A. My -- the evidence that I have looked at indicates that different types of imagery and themes are used in the cigarette advertisements that I have looked at, and I will be speaking about the relationship with how those kinds of images may have some impact on consumer processing.

Q. Lots of consumer products use different images; is that correct, Professor Stout? Not just cigarettes, right?

A. That's true. There are many images used in many ads for many different products.

Q. And are you -- do you claim expertise in the interpretation of imagery?

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A. In the interpretation of imagery? 11:5
Q. In advertisements. 11:5
A. Well, certainly I have expertise based on my education and my teaching and the work that I have looked at. We discussed yesterday, I believe, a little bit about some of the work that I was doing on western image -- imagery, images of landscape. 11:5
Q. And speaking of that article, which I understand is in progress, my understanding from your testimony yesterday is that that is a historical type of analysis of the use of western imagery; is that correct? 11:5
A. It is historical or observational in that sense. 11:5
Q. Are you a historian, Professor Stout? 11:5
A. I'm not a historian, no. 11:5
Q. And with regard to your interpretation of imagery and advertisements, are you an anthropologist? 11:5
A. I have an undergraduate degree that is in anthropology. 11:5
Q. Do you consider yourself an anthropologist? 11:5
A. I don't have -- I don't consider myself an expert in anthropology. 11:5

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Q. Are you a visual sociologist? 11:5
A. I don't consider myself a visual sociologist. 11:5
Q. Are you a visual rhetorician? 11:5
A. I don't consider myself to be a visual 11:5
rhetorician. 11:5
Q. Are you a perceptual psychologist? 11:5
A. I don't believe I am. 11:5
Q. Do you have any formal training regarding the 11:5
interpretation of imagery? 11:5
A. Meaning that I'd have a degree in visual 11:5
psychology or a degree in -- 11:5
Q. We can start there. 11:5
A. Is there a degree in visual psychology? I'm 11:5
not quite sure. 11:5
Q. If you don't know if there is one, then I 11:5
guess you don't have it, right? 11:5
A. Well, I know I don't have it because I have a 11:5
Ph.D. in communication, so -- but there are 11:5
many -- there are many people in my field who 11:5
also have Ph.D. in communications or in 11:5
advertising or do work in consumer behavior 11:5
that in -- do work on interpreting imagery, 11:5
that, to my knowledge, do not have degrees or 11:5
whatever kind of qualifications it is for 11:5
those that you just listed, those different 11:5

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categories.
Q. Well, my question is, do you have any formal training regarding the interpretation of imagery?
A. I'm not quite sure what constitutes formal training. That's, I guess, what I'm trying to ask so I could be accurate in answering your question.
Q. Are you a psychiatrist?
A. I'm not a psychiatrist, no.
Q. Are you a psychologist?
A. I do not have a degree in psychology, no.
Q. Are you a child psychologist?
A. I do not have a degree in child psychology.
Q. What do you intend to offer as an opinion at trial regarding the impact of imagery and themes in cigarette advertisements on the consumer and on the general public?
A. The evidence that I have looked at relative to this case, I -- in looking at that, I have formed opinions about how -- how imagery is used in cigarette advertisements, and I would be commenting on that.
Q. How imagery is used in cigarette advertisements to what effect, Professor

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Stout?

A. As an executional variable. 12:0

Q. To the effect that you and I have discussed here this morning? 12:0

A. Which effect is that? 12:0

Q. We have discussed brand recognition, brand loyalty, brand choice. To that effect? 12:0

A. To those effects, among others, I believe. 12:0

Q. What others? 12:0

A. Relative to processing of information. 12:0

Q. Processing of information once someone has decided to enter a product category? 12:0

A. Processing of information period, I think. 12:0

Q. What will your testimony at trial be relative to processing information in general? 12:0

A. In general? 12:0

Q. You just testified that you -- you just qualified my answer, so I -- 12:0

A. Okay. I see what you are saying. Well, relative to how -- how people process information relative to imagery, and so -- 12:0

Q. And what impact has individual's processing of information relative to imagery had on their behavior, and are you prepared to offer an opinion at trial in that regard? 12:0

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A. I would be discussing that at trial, yes. 12:0
Q. And what will your opinion be in that regard? 12:0
A. My opinion would be that individuals process in different ways and that imagery is one way that they process, and that it does have an impact or can have an influence on behavior that follows after the processing. 12:0
Q. What kind of behavior? 12:0
A. And that behavior then could be relative to cognition or affect or behavior, meaning purchase -- 12:0
Q. Consumer behavior? 12:0
A. -- or purchase intents -- right, right. 12:0
Q. And that is a factor among all the other factors that we have previously discussed here today and yesterday; is that correct? 12:0
A. Of the list that you had read off earlier about individual characteristics, et cetera, yes. 12:0

MS. TYLER: I think that we have used up all of the time that you have today, Professor Stout. And I will get in touch with Ed Hohn of the Nix law firm to ascertain when he is free and you are free to continue this deposition at a later date. I want to 12:0

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tell you I appreciate your making yourself available. You have been very kind, and I appreciate that very much. Thanks so much. 12:03

THE WITNESS: Thank you. 12:03

THE VIDEOGRAPHER: Off the record at 12:03. 12:03

(DEPOSITION ADJOURNED)

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